



Australian Government
Productivity Commission

Resources Sector Regulation

Productivity Commission Draft Report *Overview*

March 2020

This draft report has been prepared for further public consultation and input. The Commission will finalise its report after these processes have taken place.

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The Productivity Commission

The Productivity Commission is the Australian Government's independent research and advisory body on a range of economic, social and environmental issues affecting the welfare of Australians. Its role, expressed most simply, is to help governments make better policies, in the long term interest of the Australian community.

The Commission's independence is underpinned by an Act of Parliament. Its processes and outputs are open to public scrutiny and are driven by concern for the wellbeing of the community as a whole.

Further information on the Productivity Commission can be obtained from the Commission's website (www.pc.gov.au).

Opportunity for further comment

You are invited to examine this draft report and comment on it by written submission to the Productivity Commission, preferably in electronic format, by 5 June 2020. Further information on how to provide a submission is included on the inquiry website: <https://www.pc.gov.au/inquiries/current/resources/make-submission>.

The final report will be prepared after further submissions have been received and will be forwarded to the Australian Government by 7 August 2020.

Commissioners

For the purposes of this study and draft report, in accordance with section 40 of the *Productivity Commission Act 1998* the powers of the Productivity Commission have been exercised by:

Lisa Gropp Presiding Commissioner

Terms of reference

PRODUCTIVITY COMMISSION STUDY INTO RESOURCES SECTOR REGULATION

I, the Hon Josh Frydenberg MP, Treasurer, pursuant to Parts 2 and 4 of the Productivity Commission Act 1998 hereby request the Productivity Commission to examine regulation affecting the resources sector and highlight best practice.

Background

Commonwealth, state and territory governments are responsible for managing resources in their jurisdictions and are all involved in the regulation of the sector. For example, states and territories regulate health and safety, employment, community engagement and environmental management, while the Commonwealth has constitutional powers over many of these aspects of law, and in some instances overrides any legislative inconsistencies. Additionally, States negotiate contractual agreements with individual operators that are subsequently ratified by state parliaments.

Regulation plays a critical role in ensuring that resources projects across Australia meet community and environmental management expectations. However, regulations may pose unnecessary burdens or impediments on resources companies operating, or seeking to operate and invest, in Australia.

Scope

This study will focus on regulation with a material impact on business investment in the resources sector. The Commission is asked to identify effective regulatory approaches to the resources sector and highlight examples of best-practice regulation across the Australian resources sector and internationally, taking into account the unique regulatory challenges facing individual jurisdictions.

This will provide opportunities for individual jurisdictions to assess their own regulatory environments, and to draw on leading practice.

In undertaking this study, the Commission should:

1. Assess best-practice project approval processes across Australia and internationally and identify any broader impediments to the timing, nature and extent of business investment in the Australian resources sector.

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2. Identify regulatory practices that have achieved evidence-based goals without imposing additional costs or regulatory burdens on industry, as well identifying jurisdictions' successful efforts to streamline or augment processes to reduce complexity and duplication and improve transparency for current and future investors.
 3. Identify leading environmental management and compliance arrangements that have resulted in the removal of unnecessary costs for business while ensuring robust protections for the environment are maintained.
 4. Identify best-practice examples of government involvement in the resources approvals process – taking into account the context of each development – to expedite project approvals without compromising community or environmental standards, based on sound risk-management approaches.
 5. Examine regulatory and non-regulatory examples of effective community engagement and benefit-sharing practices, and establish best-practice examples of where mutually-agreeable relationships were successfully developed between the resources sector and the communities in which they operate, including with Indigenous communities.

Process

The Commission is to consult with key interest groups and affected parties, invite public submissions and release a draft report to the public.

The Commission is to consult with COAG Energy Council working groups on existing studies related to land access, community engagement and regulatory benchmarking.

The final report should be provided within 12 months of the receipt of these Terms of Reference.

The Hon Josh Frydenberg MP
Treasurer

[Received 6 August 2019]

Contents

Opportunity for further comment	iii
Terms of reference	iv
Overview	1
Key points	2
Australia’s resources sector at a glance	4
The regulatory landscape is complex	7
Australian jurisdictions have been working to improve their regulatory systems	8
Considerable scope for improvement remains	10
Effective community engagement and benefit sharing can build confidence	25
Indigenous community engagement and benefit sharing	27
Leading practices, findings and recommendations	33

The full report is available at www.pc.gov.au

OVERVIEW

Key points

- There is no question that resources activities should meet reasonable requirements in relation to their impacts on the environment, heritage, worker safety, landowners and communities. Achieving them demands strict, often complex regulation, but if not done well this can create *unnecessary* costs for companies and diminish benefits for the broader community.
- This study focuses on whether regulatory processes can be improved to reduce unnecessary burdens without diluting environmental and other regulated outcomes. Indeed, reflecting growing community expectations and concerns, confidence in the robustness of regulatory regimes to achieve their objectives will be critical for ongoing support for investment in the resources sector.
- Notwithstanding many recent initiatives, there is evidence that regulatory processes remain unduly complex, duplicative, lengthy and uncertain and may be becoming more so.
- Many of the issues raised in this study have been raised in previous reviews. Successful reform will require greater attention to the pre-conditions for leading-practice regulatory systems — in particular clear regulatory objectives, effective governance, incentive and accountability frameworks for regulators, and adequately resourced institutions.
- No one regulatory system here or overseas stands out as leading practice in its entirety, but all have elements that merit this description. All jurisdictions could learn from each other.
- Leading regulatory practice supports an effective risk- and outcomes-based approach by regulators who: are accountable and transparent; follow clear and predictable processes; build fit-for-purpose technological and staff capabilities; collect, use and disseminate data effectively; and work to inform the community about their activities.
- Enhanced regulator accountability and transparency could significantly reduce unnecessary costs and improve regulated outcomes. Provision of clearer information about assessment requirements, agreed timelines and reporting against them, improved inter-regulator cooperation to reduce duplication, and publication of monitoring and compliance actions including for offsets commitments would assist proponents and build confidence in regulators' effectiveness. More comprehensive arrangements for mine rehabilitation would deliver community as well as reputational benefits.
- Capability gaps within regulators are a key cross-cutting issue. Governments should assess whether their regulators are appropriately funded, and the potential for greater cost recovery.
- Both governments and companies have responsibilities for addressing negative impacts of resources projects on local communities, but mandating requirements such as local content is not leading practice. Companies should consult and coordinate with local governments and community groups to promote local benefits from their community investments.
- Communities and landowners understandably want to know how a project may affect them and to comment on development proposals. Engagement should begin early in a project and continue throughout, and provide meaningful opportunities for the community to present their views. Trusted institutions can play an important role through building understanding of, and potentially allaying, stakeholders' concerns.
- Many resources projects are located on native title land. Benefits are shared with Aboriginal and Torres Strait Islander communities through native title agreements and targeted voluntary activities by companies. There is scope for reform to help ensure that management of native title agreement benefits promotes communities' objectives.

Overview

It is hard to overstate the role of the resources sector in modern life. Raw materials for the concrete, masonry, steel and glass used in infrastructure and dwelling construction; the steel and other metals used in cars, trucks, trains and planes and the fuels that run them; plastics and synthetic fabrics that are ubiquitous in packaging, clothing, communications and other technologies and construction materials; and the components of any technology including medical devices, computers, mobile phones, solar panels and batteries, for example, originally come from quarries, mines and wells.

Australia is a resource rich country, with global frontier expertise in exploration and extraction. The resources sector extracts a diverse range of minerals, and oil and gas. Over 300 mines are in operation. Oil and gas wells add to the number of active sites; quarries number about 2200.

Resources are a significant economic contributor — accounting for about 9 per cent of Australia’s GDP in 2018-19, directly employing about 250 000 people and contributing almost 60 per cent of the value of exports. Over 2017-18, the resources sector paid about \$23 billion in wages and salaries, and the minerals sector paid about \$19 billion in company taxes and \$12 billion in royalties. The oil and gas sector contributed about \$5 billion in taxes, royalties and other fees in 2016-17. Benefits also flow to the community via domestic shareholdings.

Industry, investors and some governments see significant growth potential for the sector, though the future mix of output and investment will reflect multiple (often competing) factors including global and domestic policies and new technologies. For example, emissions abatement policies will see rising demand for the many minerals required for renewable energy technologies and declining demand for coal and fossil fuels in some countries. Global population growth and economic development will likely see continued demand for fossil fuels, particularly gas as countries transition to lower-emissions sources of energy.

The focus of this study is regulatory processes

Two principal factors motivate strict regulation of the resources sector in Australia. First, resources (with a few exceptions) are owned by the Crown on behalf of the entire community. Hence, governments have an interest in managing resource development to deliver a community dividend. Second, over their lifecycles resources activities have the potential to cause harm to the environment, sites of cultural and heritage significance, workers, landowners and surrounding communities. Given the physical nature of resources activity, some level of harm is unavoidable, but regulations seek to mitigate this to maximise *net* benefits to the community.

Although essential, if not done well regulation can impose substantial unnecessary costs. Poorly designed or administered regulation can impose burdens on industry for negligible

community benefit, deterring companies from investing in projects that would have been worthwhile from a national perspective. Ineffective regulation can fail to adequately protect environmental, cultural and heritage assets, the safety of workers and the health of local communities.

This study evaluates regulation of the resources sector, identifying issues and leading-practice approaches to addressing them. The primary focus is on how regulation is designed, administered and enforced, and whether there is scope to reduce unnecessary burdens created by regulatory processes and practices.

A framework based on well-accepted and widely-applied regulatory principles is used to identify leading practices. Consistent with these principles, leading practices are those that seek to minimise burdens on businesses and regulators subject to achieving clear, evidence-based regulatory objectives. Examples are provided where possible. In some cases, the examples simply align with well-established norms for good regulatory practice. In other cases, the leading practices are more innovative.

Each stage of the project life-cycle is examined. Potential impediments to investment from the regulation of resources management, land access and project assessment and approvals, along with issues stemming from broader regulatory settings, are considered. Management of environmental and other regulated outcomes is also evaluated.

The impacts of resources activities have always provoked some level of disquiet, particularly among nearby communities. In recent years, the potential for development of unconventional gas reserves, and concerns about environmental and social impacts more generally, have prompted pushback against a range of resources developments from affected landowners, communities and other groups. Resources companies are increasingly conscious of their ‘social licence to operate’ — the need to develop and maintain community acceptance of their activities.

Reflecting the importance of these issues, and as required by the terms of reference, the study has also examined ways in which resources companies engage with communities and share benefits and identified leading practices.

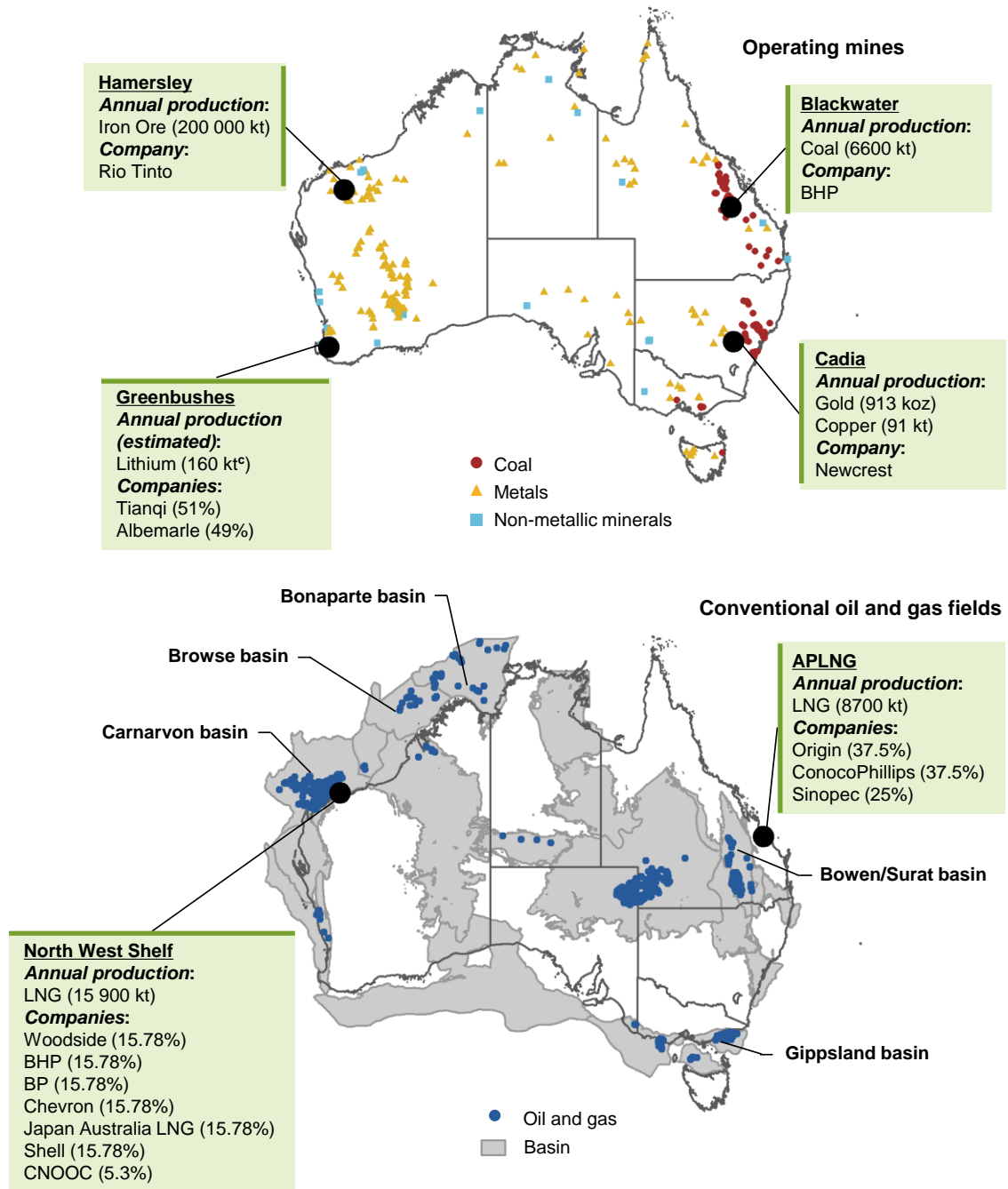
A significant share of resources activity takes place on land that Aboriginal and Torres Strait Islander communities either own (under land rights legislation) or have native title interests in. Distinct sets of issues relating to land access, community engagement and benefit sharing apply in this context.

Australia’s resources sector at a glance

Resources activity occurs in every State and Territory, and in Commonwealth waters (figure 1). Coal mines are located almost entirely in east-coast States, while metal ore mines are mostly situated in Western Australia. Conventional oil and gas fields are located both

inland (concentrated in Queensland and South Australia) and offshore (primarily on the north-west coast of Australia).

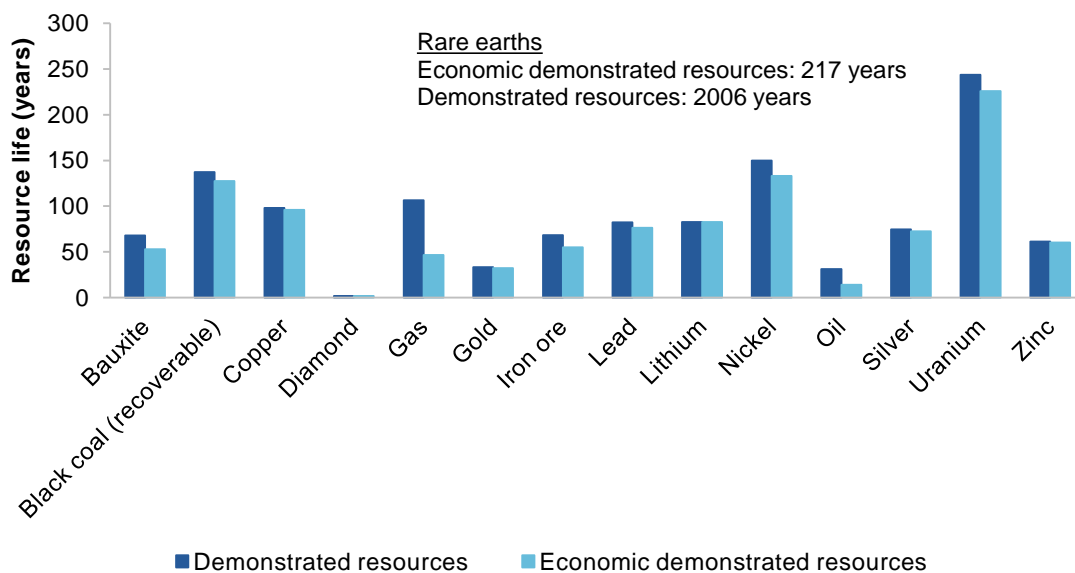
Figure 1 Resources production occurs Australia wide
 Operating mines and conventional oil and gas fields, selected major projects highlighted



Australia possesses large quantities of resources that have not yet been extracted (figure 2). While some deposits have been identified with certainty and assessed as being economically viable, others are more speculative and may be difficult to extract.

The resources market is global. Australia operates alongside major producers such as China, the United States, Russia, Saudi Arabia, Brazil and Canada. While resources are found in many countries, much of what others produce is consumed domestically. For example, China produces more resources than any country in the world — about four times the value of Australian production — but due to high domestic demand, it is also the largest global importer. In contrast, Australia is a small consumer of its own production and exports about 90 per cent (by value) of the top 10 commodities it produces.

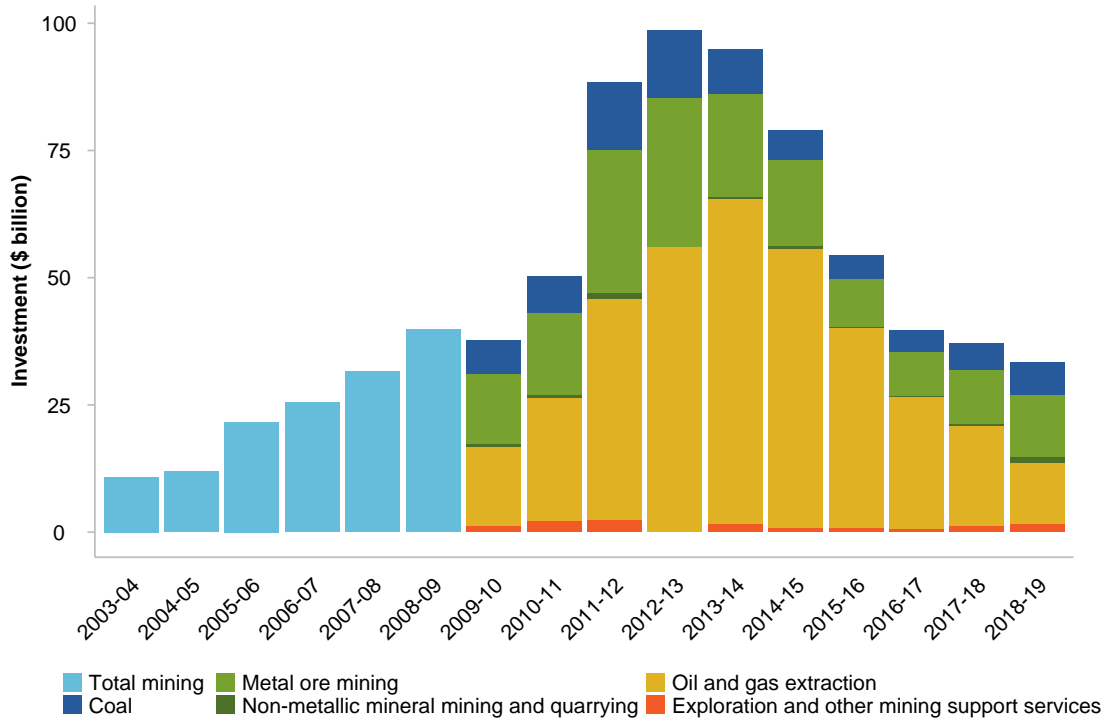
Figure 2 Known reserves are large
 Remaining years of resource life given known deposits of selected resources, 2018 (data for oil and gas are from 2014)



From the mid-2000s, Australia experienced an unprecedented resources investment boom. Rapid industrialisation and urbanisation in emerging economies drove a spike in global prices for commodities used in steel and energy production, leading Australian producers to expand production capacity, particularly in coal, iron ore and liquefied natural gas.

Investment peaked in 2012-13 at \$102 billion, about ten times the level of the early 2000s (figure 3). Since then, it has wound down as new projects have transitioned into production. Exploration expenditure has also decreased — from a peak of \$8.4 billion in 2012-13 to \$3.6 billion in 2018-19. And at October 2019, the pipeline of committed major projects — about \$30 billion worth — while still large, was about one-tenth of the October 2012 level.

Figure 3 Investment has wound down from boom levels
Resources sector investment by broad commodity, 2018-19 dollars



The regulatory landscape is complex

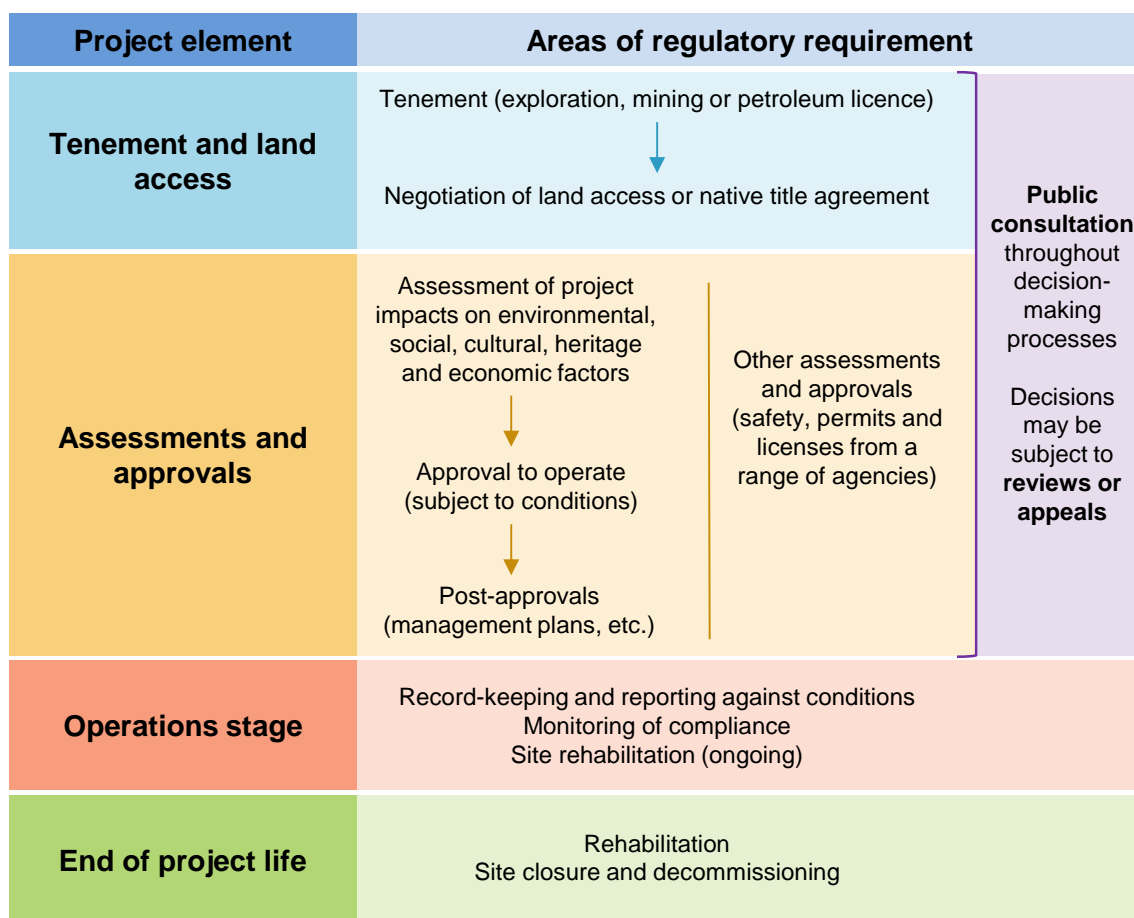
Project proponents and operators must navigate a large array of regulatory requirements across a project’s lifecycle. Before exploration or extraction can begin, a proponent has to:

- get a licence or permit
- assess the potential impacts of planned activity
- obtain any required environmental and other approvals.

Once operational, activity has to be monitored and when a site ceases operation, it has to be rehabilitated as agreed (unless this has happened progressively).

All levels of government, with multiple agencies in each jurisdiction, play a role in creating, administering and enforcing regulations. It is a complex regulatory landscape and comprehensive depictions challenge regulators themselves. Figure 4 provides a stylised mapping. Opportunities for regulatory outcomes that impose unnecessary costs on companies and fail to achieve regulatory objectives are manifold.

Figure 4 Areas of regulatory requirement for resources projects



Australian jurisdictions have been working to improve their regulatory systems

Australia is generally deemed to be a relatively desirable place to invest. Investors are attracted by Australia’s political stability, protections for property rights, relatively predictable (if cumbersome) regulatory regime and good infrastructure. Environmental outcomes, as set out in national State of the Environment reports, are also considered to be relatively strong. And the regime has facilitated many billions of dollars in investment over several decades, suggesting that the regulatory system has not acted as a significant brake.

Indeed, the vast majority of applications for new resources projects are approved (eventually). And while the number of potential investors choosing to allocate their capital elsewhere rather than navigate the regulatory maze in Australia is unknown, evidence suggests that the regulatory regimes in other major developed resources-producing countries, including Canada and the United States, are similarly complex and time consuming.

But that is not a ringing endorsement of the Australian regime. Many reviews over recent years (several by the Commission) have identified significant shortcomings and recommended numerous improvements, and reforms of one type or another have recently been introduced or are being progressed in every jurisdiction (box 1).

Box 1 Resources regulation has been an active reform area

Jurisdictions have recently introduced or are progressing reforms in many areas of regulatory effort. Selected examples include:

- Amendments to the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009* (Cth) to improve consultation and transparency requirements for offshore petroleum activities. And the Australian Government's Deregulation Taskforce has resulted in a partnership with Western Australia to develop an online portal that will enable project proponents to apply for WA and Commonwealth environmental approvals via a single application, and track its progress. A database of biodiversity studies will also be established.
- New South Wales has developed a Minerals Strategy with initiatives including a new titles management system to increase efficiency, transparency and accountability. Other reforms include a more flexible approach to offsets and improved compliance and reporting requirements for rehabilitation.
- Victoria has amended its *Mineral Resources (Sustainable Development) Act 1990* to support a transition to risk-based work plans and establish a Mine Land Rehabilitation Authority. And the *Environment Protection Amendment Act 2018* is due to take effect from 1 July 2020 with a focus on risk-based regulatory oversight and strengthened compliance and enforcement powers.
- Queensland has introduced reforms to improve site rehabilitation and financial assurance outcomes, as well as operational policies and guidance to provide greater detail on legislative requirements. A risk-based approach to environmental regulation is being implemented.
- South Australia's updated *Mining Act 1971* includes, among other changes, a commitment to increased transparency — all inputs to government decision making will now be made public. And a regular review and amendment process will test whether regulation remains fit-for-purpose.
- Western Australia has a commitment to monitoring, reporting and improving the performance of the resources regulator, and reforms to regulation are being driven through a Streamline WA program. Mining environmental approvals are the first key area of reform.
- Tasmania has amended its *Mineral Resources Development Act 1995* and regulations to clarify the Act's intent, remove duplication and streamline processes.
- Reforms to the Northern Territory's environmental protection system will focus environmental assessment on projects' significant impacts and increase transparency.

Several reviews are underway in parallel with this study. At the Commonwealth level, for example, a review of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) commenced in October 2019. In February 2020, the South Australian Productivity Commission commenced an inquiry into the effectiveness of regulation in the extractives supply chain. Western Australia is reviewing its *Aboriginal Heritage Act 1972* and New South Wales is reviewing its work health and safety regime for mining.

Considerable scope for improvement remains

Notwithstanding developments in recent years, there is a widely held view within the sector that regulatory processes are becoming more complex to navigate, more protracted and more uncertain, for little if any improvement in regulated outcomes. This is often attributed to increased risk aversion from regulators manifesting as demands for more information on which to base decisions, possibly reflecting heightened community concerns. The industry considers that Australia's global ranking as a place to invest is slipping as a result, and study participants have identified a range of regulatory issues (box 2).

Box 2 **Participants consider there is room for improvement**

[There are] significant opportunities to reduce regulatory duplication and streamline interactions between state and national legislation, to increase investor confidence and support timely project assessment processes. (SA Government, sub. 25, p. 5)

There has been a trend over the past decade or so for approval timeframes to lengthen beyond what is necessary to deliver a thorough assessment of the merits of the project and afford natural justice to all relevant parties with an interest in the project approval decisions. (QLS, sub. 41, p. 3)

Undefined and protracted delays mean that critical market windows that come and go with fluctuating ore prices are lost, and companies cannot proceed with their development (TMEC, sub. 46, p. 3)

... what is highly concerning – and discouraging to international investors – is the excessive number of project approval conditions, their highly prescriptive nature, the inconsistency and overlap between jurisdictions, and the fundamental uncertainty of process. (MCA, sub. 11, pp. 3–4)

Project approval conditions on minerals projects have become increasingly numerous and prescriptive. The number of prescriptive conditions imposed upon a project has been increasingly and wrongly used as a benchmark for sound regulatory process. This is of particular concern where such conditions are not risk-based, resulting in significant compliance effort for little environmental gain. (MCA, sub. 11, p. 13)

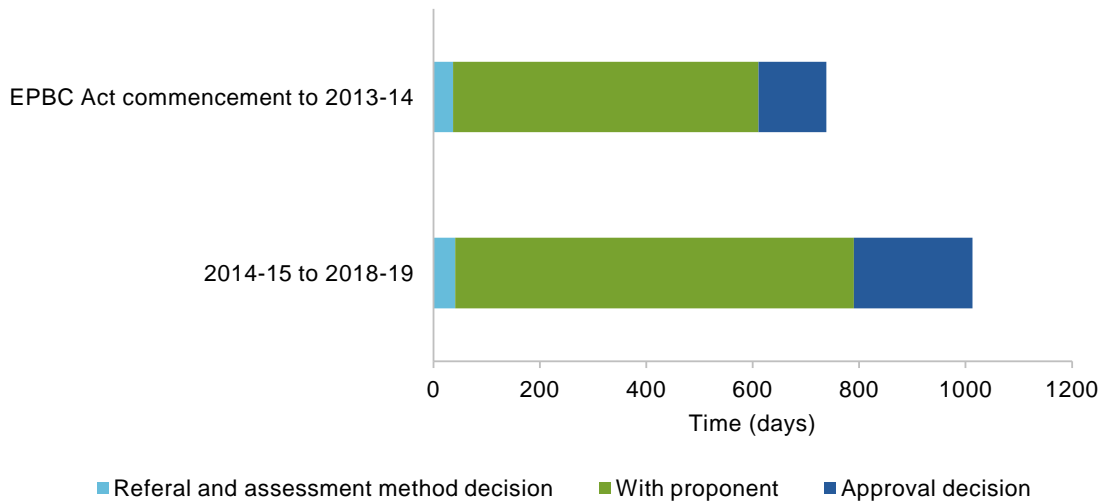
Rather than regulations being 'overly complex' or 'prescriptive' in Australia, attention needs to be placed on the chronic ambiguity and discretion that is provided under resource laws throughout all jurisdictions in Australia. Vague regulation can hinder investment in Australia through affecting the certainty as to how it will be interpreted for each project and what is expected of a proponent. (EDO, sub. 40, p. 29)

Getting hard data on assessment and approval timelines is challenging enough, let alone quantifying the extent to which these pose unnecessary burdens. However, the NSW Minerals Council noted an average assessment timeframe for five projects since 2016 of nearly 1000 days. How representative this is unknown. There is some evidence of an increase in the time required to obtain primary approval at the Commonwealth level (figure 5), although not all of the increase may reflect unnecessary delays. Where delays do occur, their costs can dwarf other regulatory costs (box 3).

But there is sufficient qualitative evidence of unnecessary costs to suggest room for significant improvement in regulation of the sector. This should be done with the dual aims of encouraging investment through reducing unnecessary regulatory burdens (particularly delays and procedural uncertainty) and building confidence and trust in the robustness of the regulatory regime across the wider community. Indeed, the Commission considers that these

two objectives are intertwined: going forward, trust in the efficacy of the regulatory system will be essential for ongoing community support for investment in the resources sector.

Figure 5 Environmental approvals can take years to secure
Average time taken for environmental approval decisions for resources projects under the EPBC Act



Box 3 The cost of delays can dwarf other regulatory costs

Project delays are costly because the delay of a net revenue stream in effect leads to net revenue forgone. The Commission has previously estimated that a one-year delay for a gas project could cost in the order of 10 per cent of its net present value, acknowledging that such estimates are highly sensitive to assumptions, particularly the cost of capital (discount rate), and projected revenue flows including future commodity prices.

Given the size of most resources projects, delay costs can dwarf the direct costs of regulatory obligations such as assessment documentation and studies, even though these often run into millions of dollars.

Overall, regulatory regimes in all jurisdictions have elements of leading practice (some are noted below, selected practices are summarised in table 1 (at the end of the Overview), and many more are identified throughout the report), but no one jurisdiction has a leading-practice *system*. This means that there is ample scope for jurisdictions to learn from each other. To this end, the Commission sees merit in Ministers establishing a forum under the umbrella of the Council of Australian Governments to foster such interaction.

Risk- and outcomes-based regulatory approaches would help focus on the things that matter

Claims of increasing regulator demands for information, leading to increased costs for proponents with little beneficial impact on outcomes, were a strong theme among study participants (box 4). This view was not confined to industry participants. The NSW Department of Planning and Environment has observed that ‘[environmental impact assessment] documents are getting longer and more complex without necessarily improving public understanding or decision making’.

Box 4 More requirements can raise costs for little apparent benefit

Study participants pointed to increases in assessment requirements and approval conditions.

[Environmental impact assessment (EIA)] requirements have proliferated over recent decades as governments (state and federal) are taking an increasingly risk-averse approach to EIA. Increasing ... requirements are resulting in wide-ranging assessments of all impacts, regardless of materiality/level of risk. (MCA, sub. 11, p. 12)

... due to government’s seeming inability to prioritise assessments ... to those matters which [are] of the highest risk and therefore require the greatest studies and review, the community is often required to provide submission on enormous documents which make identifying the main issues of interest almost impossible. This not only means significant time and expense for companies for little environmental or social benefit, it has created a whole industry of professional reviewing middle men when the discussion should be with the directly affected stakeholders. (QRC, sub. 27, p. 20)

There is a trend for more conditions to be imposed on all projects due to a one-size-fits approach, rather an impact-based analysis. (BCA, sub. 43, p. 5)

Project approval conditions on minerals projects have become increasingly numerous and prescriptive. The number of prescriptive conditions imposed upon a project has been increasingly and wrongly used as a benchmark for sound regulatory process. This is of particular concern where such conditions are not risk-based, resulting in significant compliance effort for little environmental gain. (MCA, sub. 11, p. 13)

A cycle of increasing regulatory compliance (scope creep) can occur when business has a vested interest in receiving an important approval from the regulator, so there is no incentive to push back on additional information and reporting requests made from these bodies, in the interests of time (as often the associated financial cost associated with any further delay in receipt of approval outweighs the benefit). (Roy Hill, sub. 7, p. 5)

Requests for broad-ranging environmental impact assessments are generating documentation that can run to thousands of pages. However, whether all the blame lies with regulators is unclear — for example, it has been noted that consultants face financial incentives to prepare lengthy reports. But the result is unduly high costs for companies, barriers to community engagement and unnecessary administrative loads on regulators who have to digest the material (contributing to delays).

Failure to tailor conditions to projects leaves proponents facing requirements that sometimes make little sense in their operational context and that can even be impossible for them to comply with. In addition, altering an approval in some jurisdictions can involve a time-consuming revisiting of the approvals process. Some companies are not adopting new technologies because the regulatory costs of seeking to change conditions are considered too high.

A rigid one-size-fits-all approach is also increasingly out of step with a shift towards new ‘critical minerals’ (such as lithium, boron and rare earth elements), reworking old mine sites and a tendency for newly identified deposits to be deeper and more challenging to extract.

Companies are often loath to push back on demands for fear of creating further delays. In the case of ill-fitting conditions, companies often accept what is suggested in order to receive approval, and then seek to negotiate more suitable conditions in the post-approvals stage.

The lack of a targeted risk-based approach appears to arise mainly from regulators’ approaches to administering regulation rather than the regulations themselves. As noted earlier, a consistent theme from many participants was that regulators have become increasingly risk averse (in the sense of not wanting to make a call about what is important). It is impossible to gauge the extent of this, but any increase in risk aversion might reflect a lack of support, clear guidance and expectations from governments at a time of heightened community concerns about some resources activities. It might also reflect gaps in regulator capacity and capability (discussed below).

Irrespective of whether there has been a change in risk aversion, more thorough application of a risk- and outcomes-based approach to environmental impact assessment (box 5) would help streamline processes and deliver sounder environmental outcomes. Earlier scoping of key risks, including community consultation, would give regulators and proponents a clearer and shared understanding of what information is needed to support decision making.

Box 5 What is risk- and outcomes-based regulation?

A risk-based approach to regulation bases regulatory decisions and priorities on the likely risks posed by an activity, taking into account both the potential seriousness of a risky outcome and the likelihood of it occurring. Appropriate and proportionate levels of control are then adopted.

Risk-based regulation requires regulators to begin by identifying the risks that they need to manage, not the rules they have to enforce. This requires that they have accurate information and data about the operation of regulated industries. Regulators also need adequate resources in order to target their efforts to the areas presenting the greatest risks. In an ideal setting, a risk-based approach can facilitate the efficient and effective use of regulatory resources.

Outcomes-based regulations set out the outcomes or standards that regulated entities must achieve, without specifying what steps must be taken to comply. This contrasts with prescriptive regulation, which sets out in specific detail how regulated entities should behave.

Outcomes-based rules are generally preferable, as they are flexible enough to accommodate different or changing circumstances, including material changes to how an industry operates, and they enable businesses and individuals to choose the most cost-effective ways of complying.

There are several examples of relevant leading practice in operation.

- Regulators can sit down with proponents at the outset of a project and work with them to identify key risks as now happens in South Australia, where impact assessments are then tailored to addressing those risks.

-
- Measurable outcomes can be identified and pursued through proponent design of risk-management strategies best suited to their project (as now happens in the offshore oil and gas industry under the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) and in Norway), rather than through prescriptive operating conditions.
 - A risk-based approach to due diligence when granting tenements to identify likely non-compliant operators would bring community as well as reputational benefits to other operators. Explorers could be required to notify landholders of low-impact low-risk activity in person (as required by the Queensland Land Access Code) rather than via formal negotiation.

Greater cooperation, coordination and concurrence would reduce delays, duplication and inconsistency

Projects typically require approvals from multiple agencies, giving rise to concerns about protracted (sometimes sequential) approval timeframes, duplicated effort and inconsistent requirements (box 6).

Box 6 Involvement of multiple agencies can create confusion

Minerals developments are subject to multiple state/territory level approvals requiring interactions and oversight by a range of different agencies, including but not limited to those responsible for planning, environment, water and mining. Managing the myriad approvals and licencing processes can and does lead to additional confusion, costs and delays. (MCA, sub. 11, p. 17)

... the Company has spent an enormous amount of time constantly following up with the different NSW Government departments for progress updates and simple clarifications. (AMEC, sub. 31, p. 15)

Where multiple agencies have jurisdiction over a project ... a number of issues can occur. Where dual-processes are required, additional and unnecessary work is created, and where multiple parallel approvals are required across jurisdictions and agencies, there is no central coordinating agency or office, and a lack of coordination and prioritisation can lead to project delays. (Woodside, sub. 18, p. 4)

... 81 per cent of respondents whose actions were subject to conditions under the EPBC Act, as well as state and territory planning and environment permits, reported some or substantial overlap in the conditions. (APPEA, sub. 17 to PC (2013), p. 8)

The imposition of approval conditions under the EPBC Act also increases compliance costs across Australia, particularly when those such approval conditions duplicate or impose additional requirements that are similar to State or Territory requirements. (NSW Minerals Council, sub. 28, p. 37)

Regulatory coordination within jurisdictions appears to have improved over the last decade. The Commonwealth and most other jurisdictions have some variation of a lead agency model and all jurisdictions offer major project facilitation. But navigating the regulatory landscape remains challenging for some proponents. And regulation by multiple agencies risks regulators overstepping their remit, resulting in duplication and inconsistency.

It would be infeasible and probably inappropriate to bring *all* approvals required at a given level of government under the auspices of a single regulator, but significant benefits can flow

from improved coordination. Arrangements that enable regulatory processes to occur in parallel rather than in sequence can also reduce delay costs.

Leading practices include:

- Western Australia’s use of memorandums of understanding and officer working groups, which regularly bring together case management officers from different agencies to resolve issues surrounding approvals
- the South Australian mining regulator’s use of funds from costs recovered from companies to pay the salaries of staff in other regulatory agencies (supporting more efficient approvals processing and better inter-agency communication), and use of multi-agency taskforces that are assembled for complex projects.

Reducing Commonwealth–State duplication would deliver substantial benefits

Delays and duplication can be major issues for projects that trigger the EPBC Act and require environmental approval at both the Commonwealth and State or Territory level.

Bilateral assessment agreements are leading-practice arrangements that reduce duplication by allowing proponents to prepare a single set of assessment documentation for both Commonwealth and State or Territory decision makers. Participants have indicated that they are of demonstrable benefit but that duplication in approval conditions, and in monitoring and reporting requirements, remains problematic.

Participants continue to advocate for bilateral approval agreements, which would allow State and Territory decision makers to approve or reject projects under the EPBC Act, acting as the authorised Commonwealth decision maker. Despite widespread support, including from the Commission in previous studies, these have proved a harder nut to crack. Although allowed in principle under the EPBC Act, none are in force. Draft agreements have been made, but their implementation requires changes to the EPBC Act which stalled in the Senate in 2014. Additional challenges lie in the likely complexity and limited coverage of agreements, but they remain worthy of pursuit and trial.

Delays, duplication and inconsistency could also be reduced by:

- rigorous application of risk- and outcomes-based approaches in State, Territory and Commonwealth jurisdictions (discussed above)
- improved cooperation and coordination between the Commonwealth and State and Territory regulators, including through out-posting of Commonwealth officers to jurisdictions with high application throughput, and training of State and Territory officers in EPBC Act requirements (which would help ensure that information provided in bilateral assessments meets Commonwealth requirements)
- better communication by regulators to explain reasons for differences in the requirements from Commonwealth and State and Territory regulators, and to ensure regulators have worked to create as much alignment as possible in conditions

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- reviewing the need for both the nuclear and water triggers under the EPBC Act.
 - A number of proposed rare earths and mineral sands operations have been classified as nuclear actions, triggering the EPBC Act, despite the explanatory memorandum for the EPBC Bill stating that the mining and milling of uranium ore (the focus of the trigger) does not include these types of activities. States already regulate the naturally occurring radioactive material in commodities like mineral sands under Australian Radiation Protection and Nuclear Safety Agency regulations. Additional scrutiny (and regulatory requirements) under the EPBC Act appears to deliver few, if any, benefits to the community, but adds significant costs.
 - Since 2013, coal seam gas projects and large coal mines expected to have a significant impact on a water resource have been classified as protected matters under the EPBC Act, and so require Commonwealth approval. There is not strong evidence that the water trigger has filled a significant regulatory gap, but it has imposed considerable duplicated effort.

Enhanced regulator capacity and capability are key to enduring reform

Adoption of risk- and outcomes-based approaches and greater inter-regulator cooperation requires sufficiently resourced, well-directed and capable regulators. Widespread concerns about regulators' capacity suggest these features are lacking in many agencies (box 7).

Inadequate funding appears common — a product of limited cost recovery combined with budget cuts and efficiency dividends in a number of jurisdictions. Additional funding of \$25 million for the Commonwealth environment regulator announced in the Mid-Year Economic and Fiscal Outlook 2019-20 to address the backlog in environmental approvals is one recognition of this issue.

On the capability front, agencies can lack adequate scientific and technical expertise and industry know-how. Staff may only be in their roles for a short period of time. Lack of permanent, deep expertise means that staff may be unable to assess project proposals in a risk-based manner. For example, staff may not fully understand the technical details associated with an application, or not be up to date with technological advances that would allow a project proponent to achieve the same regulated outcomes in more efficient ways.

Box 7 **Capability is seen as a key factor in delays and uncertainty**

Regulator capability and resourcing were a focus for many study participants. For example:

Industry has observed some significant differences in the capability and consequent resourcing of agencies and regulators as they relate to the petroleum industry ... These differences in capabilities is typically expressed as disparities in timeliness of approvals, which has resulted in project approval delays and timing uncertainty for industry. (APPEA, sub. 44, p. 13)

We recognise this [regulator capability and under-resourcing] to be a major challenge – especially the attraction and retention of high-end, industry-relevant technical skills in an environment which appears, from the outside, to prefer to move staff around rather than retain and grow sector specific expertise. It also struggles with a mechanism to compete with industry salaries. (Garnett, sub. 24, p. 5)

Delays in regulators fulfilling their obligations can appear, at times, to be driven by resourcing constraints within agencies. The matter of adequate resourcing is not just about personnel numbers but equally applies to the availability of suitable technical expertise and live industry experience within the regulator. (Woodside Energy sub. 18, p. 4)

Officers of [the NSW] Resources Regulator [are] lacking in experience and understanding of the exploration sector ... the expertise of the regulator is often not relevant to the present project or the issue being dealt with ... (NSW Minerals Council, sub. 28, p. 36)

Decision-making approaches for similar issues often vary between officers, reflecting different capabilities and, potentially, gaps in training and clear guidance about their regulatory function.

Furthermore, staff turnover can affect continuity, frustrating proponents where case handovers are not smooth. This contributes to inconsistency and processing delays.

NOPSEMA is one outlier. As an independent statutory national regulator for offshore oil and gas, it is not tied to public sector wages and conditions, giving it greater freedom to employ staff who are technically competent with the experience, backgrounds and capabilities needed to assess environmental plans. NOPSEMA also entirely cost recovers its services through levies and fees. When workflow increases, revenue increases and the agency can take on additional staff. Furthermore, full cost recovery, coupled with transparency about how revenue is spent, gives industry visibility of how its contributions are used, and contributes to cost consciousness and demand responsiveness on NOPSEMA's part. The offshore oil and gas industry is generally very positive about the regulator.

Because of its focus on one industry segment under Commonwealth jurisdiction, the NOPSEMA model would not translate in full to the broader, more diverse resources sector. But wider adoption of a number of its characteristics, including resourcing, would bring benefits.

Other leading-practice approaches that build capability include:

- secondments (such as the officer exchange program between the NT and WA environmental regulators)
- training programs (offered in Tasmania for senior management and in NOPSEMA for all staff regarding regulatory practices)

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- strategies to target particular skills gaps, including technical expertise (like a strategy adopted by the Environment Protection Authority (EPA) Victoria)
 - site visits (as offered by the Victorian mining regulator).

The Commission also sees benefits in regulators consulting industry, including peak bodies, on a program of site visits in order to develop technical expertise. Such programs could form part of induction training provided to new staff.

Regulators could also make better use of technology to undertake routine tasks, freeing up staff to concentrate on more complex tasks and improving the interface with proponents and the community. The Commonwealth–WA partnership to build a portal that will enable proponents to track applications is a promising initiative.

A supporting culture that develops capability

Effective implementation of leading regulatory practices requires a supportive culture, with strong leadership from senior management.

Leading practices include appointment of a regulatory champion (like the Chief Risk Officer in the Commonwealth Department of Agriculture, Water and the Environment), recognising and incentivising good staff performance (as per the Queensland mining regulator), creation of working groups to assess and promote cultural change (a NOPSEMA approach) and reporting on performance (for example, the WA mining regulator reports its target timeframes and its performance against them).

Adequate resourcing is a basic pre-requisite for leading-practice regulation

Ultimately, governments are responsible for funding their regulatory agencies, setting performance expectations and monitoring against them.

Governments in each jurisdiction should assess whether their resources-related regulators are appropriately funded, enabling employment of the appropriate number and calibre of staff for implementing a risk-based regulatory system. They should also investigate opportunities for enhancing regulators' cost recovery processes (like those adopted by the SA mining regulator and NOPSEMA).

Improved accountability and transparency would enhance certainty and confidence in the regulatory system

Inadequate accountability and transparency in some regulatory systems are creating uncertainty for proponents and hindering community confidence in the sector.

Regulators do not always provide clear information to proponents about assessment requirements. Proponents claim they deliver what they think is needed, then face requests for more input — extending timelines to approval and adding costs to the process. Lack of guidance also impairs the quality of social impact assessments.

Not all jurisdictions publish information on target assessment and approval timeframes. In some instances, timeframes are stretching out without clear reason, and many agencies do not report on whether target timeframes are achieved. Regulators have a tendency to blame proponents for not supplying adequate information; proponents tend to blame regulator capacity and capability for delays. Greater transparency could shed some light on where the problem lies.

In some cases, approval requirements are being moved from the primary approval process into the so-called ‘post-approvals’ phase (box 8). In part, this is a function of regulators struggling to meet statutory timeframes (where these exist); in part, it reflects the preferences of some proponents to do the minimum required to obtain primary approval as early as possible so they can then seek investment financing. But there is little accountability or transparency in the post-approvals process. For example, there are no statutory timeframes and reporting requirements are unclear, making for greater uncertainty and delay.

Box 8 Post-approval processes add to uncertainty and delays

It has become increasingly common ... for approvals to be granted subject to conditions requiring later lodgement and acceptance of various types of plans or reports, which are required before operations (or construction) can commence. However, for many of these ‘nested’ approvals, there are two significant risks:

- The matter that has been deferred for future consideration may be fundamental both to the approval and to the proponent’s investment decision, in which case, it is a matter that should have been decided upfront. These types of conditions may be invalid, or, in some instances, may unintentionally invalidate the entire approval; and
- There is no assessment framework for the plan or report, such as regulatory timeframes, criteria or appeal against refusal. There may be multiple information requests, with no way of closing out the process, preventing the operation (or construction) from starting. (QRC, sub. 27, p. 13)

The process for navigating post approval requirements for mining projects is becoming increasingly uncertain ... This is becoming increasingly difficult and time consuming, with limited accountability or transparency ... Under the NSW assessment process there has been a noticeable increase in post approval requirements necessitating further approval or consultation with various Agencies ... satisfaction of these conditions often takes months ... (NSW Minerals Council, sub. 28, pp. 15, 26, 34)

In addition to the increased time and resources required to resolve post determination issues, the increased reliance on post approval requirements is causing significant uncertainty for operations, particularly where ‘incremental approvals’ are required for projects to continue operating. (Peabody Australia Coal Pty Ltd, sub. 33, p. 5)

The timing of [Offset Management Plan] approvals are becoming one of the biggest risks of delays to the commencement of mining projects. (Anglo American, sub. 42, p. 10)

There are examples of better practice:

- Western Australia provides guidance to proponents on environmental assessment requirements and New South Wales likewise provides guidance on social impact assessment requirements.
- Western Australia is also working to speed up information flows and is publishing average approval times, including the time that applications spend with proponents.
- NOPSEMA has found that publishing applications and seeking public comment has lifted the quality of information provided.

Better communication about outcomes would build trust

Environmental report cards generally find that Australia’s system of resources regulation delivers good environmental and safety outcomes. But publication of information about resources monitoring and enforcement activity is limited. And few jurisdictions provide the public with meaningful information about whether resources activities, once operational, meet regulated requirements. While regulators in all jurisdictions provide reports summarising their monitoring and compliance activities, the format and content is not always accessible for a lay audience. It can be difficult for the public to get a picture of a regulator’s most consequential activities and to assess the overall state of play with compliance.

Offsets can enable economically valuable projects to go ahead without compromising overall environmental quality. But again there is little available evidence about whether they are achieving their objectives. A community member seeking insight into whether offsets have been delivered, for example, would generally not be able to find out one way or the other.

There are some examples of leading practice. Western Australia’s detailed offsets register is one. And comprehensive reports published by the New South Wales Resources Regulator on its activities, including enforceable undertakings, incident investigations and compliance priority programs is another.

Harnessing information and data would support better regulation and community engagement

Resources projects generate rich data and information — about geological formations and the quality of resources, heritage sites, threatened species, groundwater assets and more. While much is collected, relatively little is made publicly available. This can lead to duplicated effort and unnecessary costs for proponents, and impede outcomes monitoring. There is a lack, for example, of consistent and comprehensive data on Indigenous heritage, despite the collection of considerable information by companies as part of the assessment process. Digital technologies could support the relatively low-cost collection and management of data and information.

Data and information collected by resources companies have value beyond the sector — for example, in water resource management — and also hold significant potential value for the broader community. They can enhance understanding of resources activities, increase confidence in the regulatory system, help with communicating regulatory objectives and provide evidence of whether those objectives are being met. Research and information provision by trusted institutions can also play an important role in informing communities. Where there is tension in communities about resources activities, information provision can contribute to allaying fears and developing acceptance.

Examples of leading practice exist:

- The Queensland GasFields Commission, an independent statutory body, aims to manage and improve coexistence among rural landholders, regional communities and the onshore gas industry. Publication of accurate data and information contributes to achieving this end. Also in Queensland, the Office of Groundwater Impact Assessment has built significant expertise in large-scale, groundwater impact modelling. Its research helps allay concerns about the potential impacts of groundwater extraction from resource operations. Independence helps create trust in the work done by these bodies.
- The Gas Industry Social and Environmental Research Alliance — a collaboration between the Commonwealth Scientific and Industrial Research Organisation (CSIRO), Commonwealth, State and NT governments and industry — undertakes publicly-reported independent research.
- The WA EPA has formed a working group with the NT EPA and NOPSEMA to investigate ways in which digital technologies could streamline the capture, supply and interpretation of data in the environmental impact assessment process. South Australia now requires publication of all inputs.
- The pending development by the Commonwealth and Western Australia of a database of biodiversity studies is a long overdue initiative.

Governments are responsible for the foundations of leading-practice systems

As already noted, many of the regulatory challenges facing the sector have been raised in previous reviews, by the Commission and others. Key to addressing them, is putting in place the appropriate pre-conditions for delivering efficient and robust regulatory processes. These include:

- an institutional and governance architecture that:
 - assigns clear roles and accountabilities
 - sets clear expectations of regulators and decision makers
 - is reviewed regularly to ensure regulation remains fit-for-purpose and regulator performance is consistent with expectations

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- provision of, or arrangements for, adequate funding and resourcing of regulators (discussed above)
 - evidence-based and consultative policy-making processes that translate to clear and consistent regulatory objectives.

Governments are ultimately responsible for ensuring that these pre-conditions are in place.

Statements of expectations (used for the Victorian mining regulator and NOPSEMA) can clarify a government's expectations of a regulator. Such statements are important for aligning regulator incentives with policy objectives, and reducing 'grey' areas and ambiguity that create scope for inconsistent decision making and excessive risk aversion in particular. In essence, clear statements of expectations both empower and authorise regulators to make decisions and make them more accountable.

A range of institutions are well placed to (and do) conduct reviews. For example, several jurisdictions have established offices akin to the Commonwealth Office of Best Practice Regulation and formed State-specific Productivity Commissions (in New South Wales in 2018, Queensland in 2015 and South Australia in 2018). The Victorian Government has appointed a Better Regulation and Red Tape Commissioner. And jurisdictions have drawn upon Auditor-General reporting to inform change. Further, jurisdictions have undertaken a range of broader initiatives to assess the prevalence of redundant and duplicative regulation, including through the Australian Government's Deregulation Taskforce, the Streamline WA initiative and numerous Productivity Commission reviews. And the Independent Review of the NSW Regulatory Policy Framework highlighted a 'lifecycle' and 'whole-of-system' approach for developing and managing regulation, as is used in Canada and New Zealand, to ensure that frameworks remain fit-for-purpose.

Political factors will necessarily shape regulatory systems. Decision makers have to balance the trade-offs between resources developments and other land uses. They clearly have to be attuned to community expectations. But investor confidence can be destabilised by sudden policy changes that occur without consultation and analysis, such as abrupt changes to royalty settings. Policy positions not based on sound evidence, such as blanket bans on gas exploration, undermine investment and community welfare. And the absence or vagueness of policy can translate to inconsistent regulatory objectives and decision making. Recent regulator decisions in relation to scope 3 emissions, for example, have created uncertainty for investors, in particular with respect to the weight that might be given to these emissions in future regulatory decisions. Moreover, targeting scope 3 emissions on a project-by-project basis is likely to be an ineffective mechanism for reducing global emissions. Study participants raised a number of concerns with policy decisions and processes (box 9).

Undue political influence on the operation of a regulatory regime, or lack of support for it, can risk undermining confidence in integrity of the system itself.

Leading practice involves governments:

- clearly communicating their regulatory objectives

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- adopting consultative and evidence-based processes when developing or changing policies and regulations
 - being transparent about the reasoning behind decisions
 - weighing the environmental, social, amenity and economic impacts of any proposed development against the benefits on a project by project or regional basis, rather than for example, pre-emptively banning an activity such as gas exploration.

Box 9 Unclear policy and regulatory objectives, inconsistency and sudden policy changes increase uncertainty for potential investors

Study participants raised concerns about the regulatory design process, for example:

In the complex legal landscape affecting the resources sector, adequate consultation time is essential to allow stakeholders to identify unintended consequences of proposed changes, which can be many and varied, and may include significant impacts on the legitimate expectations of stakeholders. (QLS, sub. 41, p. 2)

At both state and federal levels, there is an acknowledgement that the scope three emissions of proposed projects are relevant to their assessment. However, there is not a consistent approach as to how the contribution of GHG [greenhouse gas] emissions to global climate change should be assessed and how this should be factored into the public interest of a project proceeding. (ACF, sub. 32, p. 19)

The oil and gas sector is inherently marked by high levels of (resource and price) risk and uncertainty in advance of major investment decision making. Stability and gradual change in the regulatory settings are important. For example, a recent “overnight” announcement of royalty increases in Queensland is destabilising because it is not congruent with the stated aims of government to put downward pressures on gas prices and increase supply (in fact it does the opposite). (Garnett, sub. 24, p. 3)

The regulatory outcomes sought by the [water] trigger – to improve environmental outcomes and enhance community confidence – were poorly defined, being broad and difficult to measure. As regulatory objectives are not clearly defined from the outset, regulators and independent panels are left to interpret requirements inconsistently and potentially change scope and expectations for the regulated entity. (MCA, sub. 11, p. 11)

Other issues merit attention

Surety arrangements for rehabilitation are improving but should go further

Rehabilitation of sites has been a focus for governments in recent years. There are few examples of successful rehabilitation and governments have sometimes been left with a large clean-up bill, including from many legacy sites around the country that predate requirements to rehabilitate sites.

Surety arrangements for rehabilitation generally have been inadequate, but are being strengthened. Bonds that cover the full cost of providing rehabilitation offer the highest level of financial assurance for governments, and provide companies with full incentives to complete rehabilitation in a timely way. Surety requirements could be adjusted to reflect and

encourage progressive rehabilitation. Jurisdictions are heading in this direction, but a leading-practice jurisdiction has not been identified.

Pooled arrangements used by some State and Territory Governments need to ensure that levies reflect the risk of the company passing their liabilities to the government. Larger companies should be covered using alternative surety arrangements. Queensland's rehabilitation pool is a good example of a model that treats larger companies differently.

There is also merit in governments facilitating the reopening and rehabilitation of abandoned mines, such as through streamlined approval processes (without compromising the intent of regulation) and indemnities against past damages (where they are clearly not the responsibility of the new operator).

Legal standing arrangements are appropriate but there may be scope to reduce appeals on inconsequential procedural matters

'Lawfare' (or attempts by environmental advocates to derail projects via court action) was raised as a concern by some participants. Delays associated with review of environmental approval decisions in the court system are potentially costly but there is good reason to allow certain third parties standing to seek judicial review of environmental approvals.

In reality, there have not been many environmental citizens suits. That said, cases that have made it to court, at least in relation to Commonwealth environmental approvals under the EPBC Act, are often based on technical breaches that have no substantive impact on environmental outcomes. There would be merit in the EPBC Act review examining options for reducing opportunities for inconsequential technical breaches of procedures that lead to court action.

Other matters affecting investment

The terms of reference ask the Commission to identify any other factors that may be impeding investment.

Several study participants submitted that the tax burden on the resources sector in Australia is high by international standards and suggested measures that would lower the effective company tax rate on resources companies. A number expressed concerns about the impact of uncertain and inconsistent emissions and energy policies across jurisdictions. Australia's foreign direct investment screening regime remains a source of uncertainty for some investors. Workforce issues, including the availability of a skilled workforce and the duration of enterprise agreements for greenfield sites were identified as areas with potential for improved policy settings.

While the Commission acknowledges and notes these concerns, comprehensive examination of these issues lies beyond the scope of this study. However, findings and recommendations

have been made where the Commission has previously been asked to consider the issue and has relevant conclusions from which to draw.

Effective community engagement and benefit sharing can build confidence

Resources projects generally bring net benefits to the economy and community as a whole as well as the local communities in which they operate. But both positive and negative impacts on local communities are typically amplified by the relatively large size of projects, often creating community apprehension and tensions.

Effective community engagement allows communities to have a say in projects that may affect them, and can be a valuable tool in creating support (box 10). Early engagement can help to identify issues and any impediments to the projects proceeding. Guidance to companies on how to engage is plentiful. Most frameworks cover similar themes, and there is no outstanding leading practice set of guidelines.

Engagement is normally a requirement of licensing and approval processes, and governments generally require an assessment of the economic and social impacts of a project. Companies, rightly, are required to identify the effects of their projects on communities. The issue then is who is best placed to deal with these impacts and who should pay for doing so (box 11).

Some project impacts such as volatile house prices are an inevitable market response to increased demand outstripping supply. They signal a need for adjustment and should not be suppressed, but impediments to supply responses can be addressed to moderate price disruption (for example, via land release).

Box 10 Why effective community engagement is important

Study participants emphasised the importance of community engagement to their operations.

Effective community engagement underpins the acceptance of the mining industry across regional and remote Australia. Industry engagement with regional communities has evolved over past decades, in line with improved understanding and the development of innovative approaches. (MCA, sub. 11, p. 29)

Community engagement is a two-way process and INPEX is grateful for the feedback the community has provided which enhances decision-making processes on issues that may affect local people's wellbeing and/or interests. (INPEX, sub. 34, p. 18)

Today, more than ever, interactions between company and community that aim to increase understanding on all sides, build trust, and strengthen relationships are vital to the success of resource operations. (QRC, sub. 23, p. 19)

While communities often benefit from the normal economic activities of resources companies (for example, through new jobs and higher wages), the contributions to communities by many companies go beyond these impacts. Additional 'benefit-sharing'

activities can include financial payments to local governments and community groups, investment in key infrastructure, programs to increase local employment and business capability, and approaches to mitigate the negative social effects of resources projects.

In part, companies go above and beyond in benefit sharing to build a ‘social licence to operate’. A lack of community support can lead to delays, additional financial costs and, in extreme cases, failure to obtain an operating licence. Benefit-sharing activities can also improve the liveability of a region, making it easier to attract and retain workers.

Box 11 Who should do and pay for what?

Companies should be required to address negative externalities from their operations, such as noise and dust. And they should also generally be expected to provide or pay for infrastructure that is built solely for their operations.

Governments are better placed to address impediments to market adjustment, for example, in the housing market through planning policy, including land release. Alternatively, allowing use of external (fly-in, fly-out) workforces can moderate pressures on housing demand and price increases (but possibly reduce local employment and activity benefits).

Where infrastructure is shared, governments are likely to be better placed to coordinate its provision, partly funded from direct contributions, or from royalty or rate revenue from the project. Governments are also better placed to plan for, provide and manage economic and social infrastructure associated with local population growth. Funding for generally available services should be in line with normal taxing and charging arrangements.

Left to themselves, companies may not target investment to areas of greatest benefit for the community — particularly where multiple companies are making investments simultaneously. Leading practice involves companies consulting with local governments or community groups about how they might leverage and align their investments to promote local benefits (and not shift hidden costs such as upkeep and maintenance). This can occur through formal partnerships, such as that between Rio Tinto and the City of Karratha, or informal consultative arrangements, such as the committee established by Hillgrove Resources in Kanmantoo and Callington.

Some participants have argued that local communities located near resources projects should receive benefits from resources companies over and beyond those flowing from increased economic activity and voluntary benefit sharing. These include mandated local jobs, local content and hypothecated royalties.

But approaches that mandate resources companies to use local content — either workers or services — can be costly, reducing both opportunities to source services and employment from other parts of Australia and the profitability of resource companies. There are better ways of building local capability. For example, providing businesses in local communities with the support they need to engage with resources companies, such as through BHP’s Local Buying Program, is likely to develop more enduring capability than mandating use of local content.

Nor is there a case for hypothecating royalty payments to communities near resources activities. Government revenues should be spent wherever community net benefits are greatest. Some jurisdictions have implemented royalties for regions programs that hypothecate mining royalties for use across all regions, not just those near mining projects. And, to some extent, these programs may simply substitute for other government spending. But, to the extent this is not the case, their hypothecated nature risks money being spent on projects with lower community pay-offs than might be achieved elsewhere.

It has also been suggested that consideration of community benefit sharing should encompass private landowners being given a right of veto over resources activity on their land or a right to a royalty stream. While landowners should be fairly and fully compensated for impacts of resources activity on their land, a veto right or right to royalties, regardless of the level of impact, would deliver potentially large gains to some landholders, but gains would not necessarily spread to all landholders or to local communities.

Indigenous community engagement and benefit sharing

Engagement and benefit sharing with Aboriginal and Torres Strait Islander communities can be voluntary or required by regulation, and can involve Aboriginal and Torres Strait Islander people as members of the broader community, or as the intended beneficiaries of the activity.

Regulated community engagement and benefit sharing includes agreements made under legislation that recognises the importance of land to Aboriginal and Torres Strait Islander cultures, spirituality and identities, such as the *Native Title Act 1993* (Cth) (NTA) and land rights legislation. It is understood that financial payments under agreements can run to the millions of dollars, but there is scant information available about the actual extent and nature of benefits, as agreements are private contracts. This makes it difficult to evaluate their effectiveness and to identify leading practice. The Commission has therefore relied on participants' views and insights, particularly Aboriginal and Torres Strait Islander representatives.

The ability of agreements to benefit broad sections of Aboriginal and Torres Strait Islander communities is necessarily limited by who can be parties to agreements. This, in turn, depends on who holds the relevant rights, according to legislation. Voluntary benefit sharing, by contrast, can potentially benefit broader groups, such as Aboriginal and Torres Strait Islander people who reside in communities close to resources projects but do not have a cultural connection to that land.

Leading-practice community engagement involves the free, prior and informed consent (FPIC) of Aboriginal and Torres Strait Islander people to developments affecting their traditional lands. FPIC is not a right of veto, but requires proponents and governments to genuinely engage with communities and strive to obtain consent. Ultimately, FPIC creates an environment in which governments, resources proponents and Aboriginal and Torres Strait Islander communities can reach an agreement acceptable to all parties.

Capacity limitations in some prescribed bodies corporate (PBCs) inhibit their ability to give free, prior and informed consent, and act as a barrier to effective benefit sharing. A number of government programs provide funding to PBCs. However, the adequacy of funding levels and the extent to which existing government programs meet their objectives is unclear.

The most common benefit-sharing arrangements are formal agreements made under the NTA. Two issues have the potential to impair benefit sharing in communities via this avenue:

- A lack of clarity regarding the duties of the applicants who act on behalf of groups claiming native title, and, relatedly, whether claim groups or the groups ultimately determined to hold native title are the rightful owners of funds negotiated through agreements, exposes these funds to misuse by applicants.
- Private agents can misuse native title funds, either of their own volition or on native title applicants' instructions. A contributing factor is that private agents do not have the same obligations as native title representative bodies to consider the broader native title group's interests, even though they provide similar services.

Proposed amendments to the NTA would not fully resolve these issues. The Government should examine the question of who is the rightful owner of funds from native title agreements. And the Commission is seeking feedback on whether private agents should have statutory obligations towards those who hold or may hold native title.

Participants have also raised concerns about constraints on how Aboriginal and Torres Strait Islander groups can use funds from native title agreements. These funds are commonly held and managed through charitable trusts — potentially limiting their use to support economic development. The Commission understands that charities can run profit-making activities and retain registration provided the ultimate use of funds raised is consistent with their charitable purposes and for the public benefit. The range of economic development activities that may be undertaken by Indigenous charities, therefore, may be wider than is currently perceived to be the case, but there is ambiguity surrounding the types of activities that would be acceptable. Guidance from the Australian Charities and Not-for-profits Commission would help provide clarity.

Table 1 Summary of issues and avenues for improvement

<i>Issue</i>	<i>Draft recommendations and selected leading practices^a</i>
Managing resources development in the interests of the community	
Not all companies meet their obligations as tenement holders	Thorough assessment of potential licence holders using a risk-based approach, and taking into account applicants' past regulatory compliance, insolvency and criminal conduct, and their technical competency, can address the risks of repeated non-compliance. (DLP 4.2)
Community concerns about mixed land use contribute to calls for greater regulation	For project proposals of significant public concern, accessible information provided by independent institutions can help inform debate. (DLP 4.3)
Extraction bans and moratoria can prohibit activity of potential value to the community	Rather than imposing bans and moratoria on certain types of resources activity such as onshore gas, governments should weigh the evidence on the costs to the environment, other land users and communities against the benefits on a project-by-project (or regional) basis. (DR 4.1)
Managing resources activities on private lands	
Land access can be a contentious issue	Effective strategic land use frameworks seek to balance the trade-offs between resources development and other land uses to maximise benefits for the community. (DLP 5.1) Early personal engagement between resources companies and landholders (DLP 5.2) and low-cost dispute resolution mechanisms (DLP 5.4) can reduce tensions.
Landholders often lack capacity and knowledge to negotiate with resources companies	A standard template for land access agreements can help to set expectations for landholders and resources companies, and improve confidence in the regulatory system. (DLP 5.3)
Over-use of the NTA expedited procedure can cause unnecessary delays	The National Native Title Tribunal should publish guidance about the circumstances in which the expedited procedure will apply. (DR 5.1)
Addressing unnecessary regulatory burdens	
Environmental impact assessments (EIAs) are often unduly broad in scope	Adopting a risk-based approach leads to the level and focus of investigations being proportionate to the size and likelihood of environmental risks. (DLP 6.1)
Delays at the approval stage are unpredictable and lengthy; conditions can be inappropriate	Clarity provided by timelines for regulatory processes supports proponents' planning. Public reporting of regulator performance against timelines is a valuable accountability measure. (DLP 6.2) Limiting use of stop the clock provisions to situations where issues emerge that could not have been reasonably anticipated would promote certainty. (DLP 6.3) Deemed decisions, whereby the assessment agency's recommendation to the final decision maker becomes the approval instrument if a decision is not made within statutory timeframes, can reduce delays. (DLP 6.4) Clear guidance on regulators' expectations about the content and quality of EIAs can reduce the need for additional information requests. (DLP 6.5) Outcomes-based approval conditions enable companies to choose least-cost ways of achieving defined environmental outcomes. (DLP 6.7)

(continued next page)

Table 1 (continued)

<i>Issue</i>	<i>Draft recommendations and selected leading practices^a</i>
Projects requiring both Commonwealth and State or Territory approval face delays and potentially inconsistent approval conditions	Greater cooperation between the Commonwealth and other jurisdictions would improve environmental approval processes. (DLP 6.6) When bilateral assessment agreements are renegotiated, State and Territory Governments should consider making additional commitments to address inconsistencies and overlap in approval conditions. (DR 6.2) The EPBC Act should be amended to enable negotiation of bilateral approval agreements (DR 6.1).
Processes and timelines for securing post-approvals are often unpredictable	Timelines for regulator decisions and public reporting against them are needed in the post-approval stage. (DLP 6.9) Clear guidance from regulators on post-approval documentation requirements can make the process more efficient. (DLP 6.10)
Coordination between regulators can be insufficient	Effective coordination among agencies within a jurisdiction, such as through a lead agency or major project coordination office, facilitates timely processing and minimises overlaps and inconsistencies. (DLP 6.12)
Delivering sound environmental outcomes	
Inappropriate or inadequate approval conditions impede regulator effectiveness	A 'feedback loop' between compliance monitoring and condition-setting processes can convey useful information about the efficacy of approval conditions in protecting the environment. (DLP 7.1)
Regulators' compliance and enforcement activity lacks transparency	Regular public provision of information about compliance activities, contraventions detected, enforcement action taken and lessons learned helps to improve public confidence in the sector's regulation. (DLP 7.3)
The effectiveness of offset obligations and schemes is unclear	Comprehensive public registers of offset obligations and the projects developed to meet them are a valuable transparency measure. (DLP 7.4) Schemes that allow companies to pay their offset obligations into a fund can reduce costs and deliver better environmental outcomes. (DLP 7.5) Science-based implementation strategies for the use of offset funds are key to achieving their intended purpose. (DLP 7.6)
Site rehabilitation has been limited; the historical legacy of abandoned mines is large	Notification to regulators when resources sites are placed into care and maintenance helps manage the additional risks these sites pose. (DLP 7.7) Financial assurance arrangements can provide incentives for companies to undertake rehabilitation and minimise the risk that governments will be left responsible for rehabilitation. (DLP 7.8) Progressive rehabilitation can lead to better understanding of rehabilitation requirements, ensure that funds are available, reduce the total costs of rehabilitation, improve health and safety outcomes and provide community confidence in the operator's commitment to rehabilitate. (DLP 7.10) There is merit in governments seeking opportunities to facilitate reopening and rehabilitating legacy mines. (DLP 7.11)
Surety arrangements for rehabilitation generally have been inadequate	Rehabilitation bonds that cover the full cost of providing rehabilitation offer the highest level of financial assurance for governments, and provide companies with full incentives to complete rehabilitation in a timely way. (DLP 7.9)
Investment is also affected by abrupt policy changes, policy inconsistency and uncertainty	
Investment can be undermined by abrupt policy changes, and policy inconsistency and uncertainty	Early public consultation on new policy proposals, accompanied by clear articulation of the policy rationale, can avoid policy surprises. Clear policy objectives aid consistent and predictable regulatory decision making. (DLP 8.1)

(continued next page)

Table 1 (continued)

<i>Issue</i>	<i>Draft recommendations and selected leading practices^a</i>
Bargaining arrangements for greenfields agreements can pose risks for projects	The Fair Work Act should be amended to allow an enterprise agreement for greenfields projects to specify a nominal expiry date that matches the life of the project. (DR 8.1)
Community engagement and benefit sharing can help mitigate impacts on local communities	
Some mechanisms for addressing community impacts from resources projects are more effective than others	Supporting companies to engage with resources companies, rather than mandating local procurement and employment requirements, is likely to create long-term and more enduring benefits for companies. (DLP 9.2) Coordination with local governments and communities can improve the effectiveness of companies' voluntary benefit-sharing activities. (DLP 9.3)
Specific community engagement and benefit sharing arrangements apply for Aboriginal and Torres Strait Islander communities	
Ownership of funds arising from native title agreements that precede a native title determination is unclear	The Australian Government should review the question of whether native title claim groups or holders are the beneficial owners of funds arising from native title agreements made before a native title determination, and, if native title holders are considered to be the beneficial owners of funds, whether applicants and/or claim groups have any duties towards them in receiving and managing funds for their benefit. (DR 10.1)
Scope of permissible uses of funds held in charitable trusts is unclear	The Australian Charities and Not-for-profits Commission should publish plain English guidelines on activities that are likely to be consistent with a charity's charitable purposes and for the public benefit, and those which are likely to be outside this scope. (DR 10.2)
Effective governance, conduct, capability and culture are crucial for leading-practice regulation	
Pre-conditions needed for leading-practice systems are sometimes inadequate	Governments should assess whether regulators are appropriately funded, and consider opportunities for enhanced cost recovery. (DR 11.1) Statements of Expectations from Ministers to regulators are one effective way for Governments to clearly set out their objectives for the regulatory system. (DLP 11.1) Regular independent review and evaluation of regulatory frameworks and objectives drives continuous improvement and ensures they remain fit for purpose. (DLP 11.2)
Capability challenges constrain regulator performance	Staff capability and technical expertise can be improved through secondments, training programs and site visits. (DLP 11.3) Regulators in each jurisdiction should consult with industry, including peak bodies (such as the Minerals Council of Australia and the Australian Petroleum Production and Exploration Association), on developing a program of site visits in order to enhance technical expertise. (DR 11.2) Strategies for managing information and data help promote routine use of data in regulator decision making. (DLP 11.5) Digital technology and data management systems have the potential to significantly improve regulatory processes. (DLP 11.6) Ministers, through the Council of Australian Governments, should establish a forum for regulators to share leading-practice initiatives. (DR 11.3)
Information provision and community engagement by regulators can be improved	Provision of publicly accessible information and data by regulators can promote community confidence in the regulatory system and the sector. (DLP 11.7) Engaging with local communities on the regulatory process throughout the lifecycle of a resources project and conducting broader consultation on an ongoing basis to understand community expectations can improve the public's understanding of regulatory objectives and processes. (DR 11.8)

^a DLP (Draft Leading Practice); DR (Draft Recommendation).

Leading practices, findings and recommendations

DRAFT FINDING 2.1

Global and local factors including emissions policies, technological advances, economic development and population growth make it challenging to predict the future mix and level of resources investment in Australia. However, given Australia's diverse and significant resources deposits, the potential for investment will likely remain substantial.

Managing resources development in the interests of the community

DRAFT FINDING 4.1

There is no case for a major reform of the Australian pre-competitive geoscience arrangements given the quality of the information is generally highly regarded. However, the coverage of geoscience databases could be further improved, for instance, by all jurisdictions adopting sunset confidentiality periods for public release of private exploration and production reports prior to the end of the tenure of a project.

DRAFT LEADING PRACTICE 4.1

To promote data access, confidentiality periods before public release of private exploration and production reports generally should be shorter than the tenure of a project. New South Wales new regulations are one example of this practice. Many other jurisdictions have similar arrangements in place.

DRAFT FINDING 4.2

No evidence has been presented to this study indicating that differences between jurisdictions' approaches to licensing have created impediments to investment, or that any particular regime for the allocation of tenements is 'leading practice'.

DRAFT LEADING PRACTICE 4.2

Thorough assessments of potential licence holders address the risk of repeated non-compliance. Leading practice involves regulators taking a risk-based approach to due diligence when granting or renewing tenements and considering:

- whether the applicant has previously failed to comply with licence conditions or health, safety and environment legislation (whether in the same jurisdiction, or in other domestic and international jurisdictions)
- past criminal conduct, technical competency and past insolvency.

While all jurisdictions undertake some due diligence, none fully follows leading practice.

INFORMATION REQUEST 4.1

The Commission is seeking information on whether there are aspects of mining and petroleum licensing systems that pose a material impediment to investment.

DRAFT FINDING 4.3

Domestic gas reservation schemes can reduce returns to investors and discourage investment in gas exploration and extraction, leading to higher prices in the longer run and imposing net costs on the community.

DRAFT FINDING 4.4

Bans and moratoria are a response to uncertainty about impacts of unconventional gas operations. However, the weight of evidence available, and the experience of jurisdictions where unconventional gas development takes place, suggests that risks can be managed effectively.

DRAFT RECOMMENDATION 4.1

Rather than imposing bans and moratoria on certain types of resources activity such as onshore gas, governments should weigh the scientific evidence on the costs of a particular project on the environment, other land users and communities against the benefits on a project-by-project (or regional) basis.

DRAFT LEADING PRACTICE 4.3

Where resources project proposals are contentious and generate intense public concern, establishing institutions, independent of resources companies and regulators, to provide accessible information to landholders and the broader community can help inform debate. The GasFields Commission, the Office of Groundwater Impact Assessment in Queensland and the Commonwealth's Gas Industry Social and Environmental Research Alliance provide examples in relation to coal seam gas developments.

Managing resources activities on private lands

DRAFT FINDING 5.1

Landholders frequently express concern about resources projects, and some have called for a right of veto over resources activity on their land. This would be inconsistent with Crown ownership of resources and would affect the distribution of the benefits of resources significantly. Landholders have a right to full and fair compensation for access to their land, but not for the resources under it.

DRAFT LEADING PRACTICE 5.1

Community concerns about mixed land use are best resolved through strategic land use frameworks rather than prohibitions on resources activity on agricultural land. Leading-practice frameworks seek to balance the trade-offs between resources development and other land uses to maximise economic benefits for the community. These framework should thoroughly consider the costs and benefits of allowing resources development, and have approval processes proportionate to the risks of resources development on the relevant land. The Council of Australian Governments' Multiple Land Use Framework provides a leading-practice example.

DRAFT LEADING PRACTICE 5.2

Where planned activity will be low impact, requiring early personal engagement between resources companies and landholders can ease potential tensions and be less costly than a negotiated agreement. The Queensland Land Access Code's notification requirements provide a leading-practice example of this approach.

DRAFT FINDING 5.2

Many landholders enter land access negotiations with resources companies with little prior experience or knowledge. This information asymmetry provides a basis for government intervention.

DRAFT LEADING PRACTICE 5.3

A standard template for land access agreements can reduce information asymmetry and help to set expectations for landholders and resources companies, and improve confidence in the regulatory system. The Queensland Land Access Code, providing a combination of mandatory conditions as well as guidelines, provides a leading-practice model.

DRAFT LEADING PRACTICE 5.4

Low-cost dispute resolution methods that take an investigative approach to resolving problems between parties can reduce tensions between landholders and resources companies. The recently established Queensland Land Access Ombudsman provides an example.

Special access requirements apply to resources activity on traditional lands covered by native title or land rights legislation

DRAFT FINDING 5.3

The *McGlade* decision of the Federal Court in 2017 created concerns in the resources industry about the validity of native title agreements that had only been signed by the majority of the individual members of the applicant. Amendments proposed in the Native Title Legislation Amendment Bill 2019 (Cth) should address these concerns.

DRAFT FINDING 5.4

The level of compensation paid for resources developments on native title land has typically been a matter for proponents and native title groups. However, the Timber Creek decision of the High Court in 2019 went to the value of native title rights and interests and could affect agreement-making with native title groups. Any uncertainty will likely be resolved as access negotiations occur over time.

DRAFT FINDING 5.5

Exploration activities have differing impacts on native title land. Consequently, a case-by-case approach by States and Territories to assessing whether the expedited procedure under the *Native Title Act 1993* (Cth) applies is necessary to give effect to the intention of the Act.

DRAFT RECOMMENDATION 5.1

The National Native Title Tribunal should publish guidance about the circumstances in which the expedited procedure will apply.

DRAFT FINDING 5.6

Very few projects are going ahead on land protected by the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth). The requirements that agreements must cover both exploration and extraction, and that refusal of consent for one project in an area means that a moratorium is imposed on any other development while the original proponents retain a right to renegotiate, appear to be unnecessarily restrictive.

INFORMATION REQUEST 5.1

The Commission is seeking further information on whether reforms to the following elements of the Aboriginal Land Rights (Northern Territory) Act 1976 (Cth) would help to enable resources sector investment while still achieving the aims of the Act:

- *conduct of resources companies and traditional owners during negotiations (including the way that moratorium rights are exercised)*
- *the conjunctive link between exploration and extraction approvals*
- *the potential costs and benefits of allowing other resources companies to apply to develop land rights land that is subject to a moratorium for another resources company.*

DRAFT FINDING 5.7

South Australia, Victoria and the Northern Territory have implemented alternative regimes to that prescribed under the *Native Title Act 1993* (Cth) for negotiating agreements between resources companies and traditional owners. These approaches have both advantages and disadvantages; a leading-practice approach has not been identified.

DRAFT LEADING PRACTICE 5.5

Conjunctive agreements that provide a standard set of terms for resources developments in a particular area can reduce impediments to investment on native title land. South Australia's ILUAs for gas and mineral exploration are a leading-practice example.

DRAFT LEADING PRACTICE 5.6

High-quality guidance on native title facilitates investment in the resources sector. The Australian Government's *Working with Indigenous Communities* handbook is a leading-practice example.

Addressing unnecessary regulatory burdens

DRAFT FINDING 6.1

Unnecessary delays in project commencements can be costly for proponents and the community, and typically dwarf other regulatory costs.

DRAFT FINDING 6.5

Unpredictable and lengthy delays at the approval stage are a key frustration for project proponents. That frustration is compounded where delays are seen as unnecessary or their cause is unclear.

DRAFT FINDING 6.2

Environmental impact assessments are often unduly broad in scope and do not focus on the issues that matter most. This comes with costs — the direct costs of undertaking studies and preparing documentation and the more significant cost of delay to project commencement. Disproportionate and unfocused environmental impact assessments are also of questionable value to decision makers and the community.

DRAFT FINDING 6.6

Project approvals are often conditional on the preparation of management plans that also need to be approved by regulators ('post-approvals'). The process and timelines for securing post-approvals are often unpredictable, and over-reliance on management plans is not a first-best approach to achieving environmental outcomes.

DRAFT FINDING 6.3

The referral process for the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) and the nuclear and water triggers are creating unnecessary regulatory burden:

- Over half of all projects referred under the EPBC Act do not ultimately require Commonwealth approval.
- Projects ruled out as nuclear actions in the EPBC Act explanatory memorandum are being treated as nuclear actions requiring Commonwealth environmental approval.
- The evidence that the water trigger filled a significant regulatory gap is not compelling.

DRAFT FINDING 6.8

Resources projects typically require a range of assessments and approvals by multiple regulators within a jurisdiction. While regulatory coordination has improved over the past decade, proponents still report difficulties navigating the regulatory landscape. Lack of coordination can cause costly delays and liaising with multiple agencies can also give rise to significant compliance costs.

DRAFT LEADING PRACTICE 6.1

Leading-practice environmental impact assessment involves application of a risk-based approach, where the level and focus of investigations is aligned with the size and likelihood of environmental risks that projects create. In practice this means:

- allocating different projects to different assessment tracks depending on their level of risk, which occurs throughout Australia
- thorough scoping, including community consultation, to identify which matters need to be investigated more or less thoroughly. The ongoing EIA improvement project in New South Wales shows movement in this direction
- terms of reference that focus on projects' biggest and most likely risks
- regulators that are empowered to focus on what matters most, for example through Statements of Expectations as occurs at NOPSEMA.

DRAFT LEADING PRACTICE 6.2

Timelines, statutory or otherwise, provide proponents with information about how long regulatory processes ought to take, which supports project planning. They also focus regulators' attention, and public reporting of regulator performance in meeting those timelines is a means of keeping them accountable. For example, both Western Australia and South Australia report on the share of mining proposals and other approvals finalised within target timelines.

DRAFT LEADING PRACTICE 6.3

Leading-practice use of stop the clock provisions means placing limits on when they can be used — when matters emerge that were not contained in the terms of reference or could not have been reasonably anticipated — and transparency about why the clock is stopped. No examples of leading practice have been identified.

DRAFT LEADING PRACTICE 6.4

The use of deemed decisions, whereby the assessment agency's recommendation to the final decision maker becomes the approval instrument if a decision is not made within statutory timeframes, is a leading-practice approach to reducing delays. At the same time, deemed decisions should be subject to limited merits review. No jurisdiction ticks both boxes — the *Environment Protection Act 2019* (NT) introduced deemed decisions but does not allow them to be subjected to merits review.

DRAFT LEADING PRACTICE 6.5

Clear guidance on regulators' expectations about the content and quality of environmental impact assessments reduces the need for additional information requests. Western Australia and Queensland are examples of leading practice in this area.

DRAFT LEADING PRACTICE 6.7

Outcomes-based approval conditions enable companies to choose least-cost ways of achieving defined environmental outcomes. The Commonwealth's *Outcomes-based conditions policy* outlines a leading-practice approach to outcomes-based condition setting.

DRAFT LEADING PRACTICE 6.8

The use of standard conditions for standard risks can deliver efficiencies to approval processes. Queensland's *Model Mining Conditions* are leading practice.

DRAFT LEADING PRACTICE 6.10

Clear guidance from regulators on the type and quality of information that post-approval documentation needs to include can help make the process more efficient. An example of such guidance is the *Instructions on how to prepare Environmental Protection Act 1986 Part IV Environmental Management Plans* produced by the Western Australian Environmental Protection Authority.

DRAFT LEADING PRACTICE 6.9

Regulator decisions in the post-approval stage should be subject to timelines — statutory or otherwise — and regulator performance against those timelines should be publicly reported. The New South Wales Department of Planning, Industry and Environment has recently announced its intention to report on performance against timelines for post-approvals.

DRAFT FINDING 6.9

Strategic assessments are costly but may reduce regulatory burden in the long run where they reduce the cost or number of future project approvals.

Greater Commonwealth-State cooperation, and intra-state coordination, would deliver substantial benefits

DRAFT FINDING 6.4

Bilateral assessment agreements significantly reduce regulatory burden for projects that require Commonwealth and State or Territory environmental assessment.

DRAFT RECOMMENDATION 6.1

The *Environment Protection and Biodiversity Conservation Act 1999* (Cth) should be amended, in line with the *Environment Protection and Biodiversity Conservation Amendment (Bilateral Agreement Implementation) Bill 2014* (Cth), to enable negotiation of bilateral approval agreements.

DRAFT RECOMMENDATION 6.2

When bilateral assessment agreements are renegotiated, State and Territory governments should consider making additional commitments to address inconsistencies and overlap in project approval conditions. These commitments could be modelled on those described in the *EPBC Act 1999 Assessment Bilateral Agreement Draft Conditions Policy*.

DRAFT LEADING PRACTICE 6.6

Cooperation between the Commonwealth and the States and Territories in environmental assessment and approval processes can be supported by:

- the Commonwealth out-posting staff with State and Territory regulators, prioritising jurisdictions where more projects require approval by both levels of government
- State and Territory regulators taking up opportunities to have their staff trained in the application of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

New South Wales is an example of leading practice with respect to both initiatives.

DRAFT LEADING PRACTICE 6.12

Effective coordination among agencies within a jurisdiction reduces uncertainty, facilitates timely processing and minimises overlaps and inconsistencies. This can occur through:

- a lead agency or major project coordination office that provides guidance to proponents and coordinates processes across agencies (without overriding the decision-making capacity of other regulators). The coordination models in Western Australia and South Australia, and the case management system in Northern Territory have been highlighted as leading practice by study participants
- cooperative arrangements between agencies. These include the use of memorandums of understanding, inter-agency working groups or taskforces such as those in Western Australia. South Australia's approach of using costs recovered from resources companies to pay staff in multiple regulatory agencies also supports faster approvals and better inter-agency communication.

Avenues for review of decisions bring accountability to the approvals process

DRAFT FINDING 6.7

Court cases brought by third-party opponents to resources projects may cause delay, but this does not imply that third parties should be excluded from seeking judicial review. Process-driven legislation creates opportunities for regulators to make invalid administrative decisions that open the door for judicial review.

DRAFT LEADING PRACTICE 6.11

Where approval decisions are made by unelected officials it is a leading-practice accountability measure that they can be subjected to merits review that allows for conditions and approval decisions to change to reflect substantive new information. The *Environment Protection Act 2019* (NT) puts this principle into practice.

Further information on heritage approvals would be appreciated

INFORMATION REQUEST 6.1

The topic of Indigenous heritage has not been raised by many participants to this study and it is not clear which jurisdictions, if any, could be described as leading practice. Could interactions between Indigenous heritage and the resources sector be improved? Which jurisdictions manage these interactions well already? How do they do it?

Delivering sound environmental and safety outcomes

DRAFT FINDING 7.1

Environmental report cards indicate that Australia's resources regulation has been effective in delivering relatively good environmental outcomes. But there have been several incidents and resources activities are one source of pressure on Australia's biodiversity.

INFORMATION REQUEST 7.1

Is there evidence of any systematic deficiencies in the compliance monitoring and enforcement effort of regulators overseeing resources projects? In particular:

- *Are regulators adequately resourced to carry out effective monitoring and enforcement programs?*
 - *Do the monitoring and enforcement approaches of regulators represent good risk-based regulation?*
-

DRAFT LEADING PRACTICE 7.3

Regular public-facing statements describing regulators' compliance activities and lessons learned from them, such as the New South Wales Resource Regulator's *Compliance Priorities Outcomes* reports, or NOPSEMA's *The Regulator* magazine, help to improve community confidence in the sector's regulation.

Regulators should also inform the community of any contraventions that may have put the environment or community at significant risk, and any actions they have taken in response. The New South Wales Resource Regulator's investigation information reports, and its publication of enforceable undertakings, are good examples.

DRAFT LEADING PRACTICE 7.4

Public registers of activities with offset obligations and the projects developed to fulfil them provide valuable transparency about the application of offset policies. Information on offset projects should include their biodiversity values, location, date of approval, completion status, and follow-up evaluations of benefits. Where companies fulfil their offset obligations by paying into a fund, the register should include the size of the payment. Western Australia's offset register is a leading-practice example.

DRAFT LEADING PRACTICE 7.5

Schemes that allow companies to meet their offset obligations by paying into a fund can reduce costs for both companies and governments, and can create opportunities for better environmental outcomes. New South Wales, Queensland, South Australia, and Western Australia's Pilbara Fund all offer examples of this.

While the principles behind the use of such funds, including on what basis prospective offsets projects should be evaluated, should be set subject to ministerial oversight, the fund's administration and selection of offset projects is best left to a separate body, like the Biodiversity Conservation Trust in New South Wales.

DRAFT LEADING PRACTICE 7.6

Science-based implementation strategies for the use of offset funds are key to achieving their intended purpose. These should have regard to any existing recovery plans for relevant species, and be publicly available. Queensland's Brigalow Belt offsets tender project is a leading practice example.

DRAFT LEADING PRACTICE 7.1

Regulators' experiences of monitoring compliance with approval conditions provide useful information about the efficacy of approval conditions in protecting the environment. Leading practice involves regulators employing a 'feedback loop' between the compliance monitoring and condition-setting processes, where any findings of redundant or ineffective approval conditions are communicated to the bodies responsible for setting those conditions. An example has not been identified.

DRAFT LEADING PRACTICE 7.2

Effective regulators continually look for ways to improve their methods, and for actions they could take beyond their routine monitoring and enforcement activities that could address specific problems. The New South Wales Environment Protection Authority's involvement with a study examining emissions from coal trains, and the New South Wales Resources Regulator's targeted programs described in its *Compliance Priorities* documents, provide respective examples of these practices.

DRAFT FINDING 7.2

Limited transparency in most jurisdictions means that evidence about the effectiveness of compliance monitoring and enforcement activity is limited. This situation risks damaging public confidence in the regulation of projects.

DRAFT FINDING 7.3

There are few examples of large resource extraction sites being rehabilitated or decommissioned in Australia — in part because rehabilitation and decommissioning only became a policy focus for governments in the latter half of the 20th century. As a result, there is a large number of legacy abandoned mines.

DRAFT LEADING PRACTICE 7.8

Having financial assurance arrangements in place to cover rehabilitation, based on the risk the project poses to the taxpayer, provides incentives for companies to undertake rehabilitation and minimises the risk that governments will be left responsible. These arrangements are present in most (but not all) jurisdictions.

DRAFT FINDING 7.4

Concerns about resources sites being sold to smaller firms that may not have the resources to rehabilitate them are best addressed through effective rehabilitation bonds (draft leading practice 7.9).

DRAFT LEADING PRACTICE 7.9

Rehabilitation bonds that cover the full cost of providing rehabilitation offer the highest level of financial assurance for governments, and provide companies with full incentives to complete rehabilitation in a timely way. Jurisdictions are heading in this direction, but a leading practice example has not been identified.

DRAFT FINDING 7.5

Rehabilitation pools can reduce incentives for companies to rehabilitate their sites and there are risks that the pool will be insufficient to cover the cost of rehabilitation if a large company does not fulfil their rehabilitation requirements. These pools should be used with caution, and must be paired with effective compliance and enforcement arrangements.

State and Territory Governments that use pooled arrangements for rehabilitation surety should ensure that levies reflect the risk of the company passing their liabilities to the government. Larger companies should be separate to the pool, and covered using rehabilitation bonds. Queensland's rehabilitation pool is a good example of this model.

DRAFT LEADING PRACTICE 7.7

Resources sites that are placed into care and maintenance can pose risks to the environment, and the operator may be at greater risk of default. These risks can be managed by a requirement to notify the regulator where a site is placed into care and maintenance, and the preparation of care and maintenance plans that identify these additional risks, such as those required in Western Australia.

DRAFT LEADING PRACTICE 7.10

Progressive rehabilitation can lead to better understanding of rehabilitation requirements, ensure that funds are made available, reduce the total costs of rehabilitation, improve health and safety outcomes and provide community confidence in the operator's commitment to rehabilitate.

Progressive rehabilitation can be encouraged by financial surety requirements being reduced commensurate with ongoing rehabilitation work. Victoria's rehabilitation policy for Latrobe Valley mines represents a good example.

DRAFT LEADING PRACTICE 7.11

There is merit in governments working with industry to reopen and rehabilitate legacy abandoned mines, such as through streamlined approval processes (without compromising the intent of regulation) and indemnities against past damages. The Savage River Rehabilitation Project in Tasmania is an example of a successful government–industry partnership.

INFORMATION REQUEST 7.2

To what extent are post-relinquishment obligations on resources companies a barrier to investment? What are leading-practice ways of managing the residual risk to the Government following the relinquishment of a mining tenement?

Further information about the effectiveness of health and safety legislation would be appreciated

DRAFT FINDING 7.5

The major resources states are in the process of reviewing or reforming their workplace health and safety frameworks for resources extraction, making identifying a leading practice in this area difficult. Recent safety incidents raise concerns about the effectiveness of existing frameworks.

INFORMATION REQUEST 7.3

The Commission is seeking further information about the effectiveness of resources health and safety legislation across Australian jurisdictions, including:

- whether there would be benefits in greater consistency across jurisdictions*
 - approaches that represent leading practice health and safety legislation for resources*
 - how health and safety approaches in each jurisdiction could be improved.*
-

Investment is also affected by abrupt policy changes, policy inconsistency and uncertainty

DRAFT FINDING 8.1

Government policies necessarily evolve in response to changing economic conditions, technology development and shifts in broader societal values and priorities. However, abrupt policy changes with inadequate consultation can undermine investor confidence and discourage investment.

DRAFT FINDING 8.2

Uncertainty about and inconsistent climate change and energy policies across jurisdictions risk impeding resources sector investment.

DRAFT FINDING 8.3

Lack of clarity in policy objectives can lead to inconsistent and unpredictable application of regulations across resources projects, creating investor uncertainty (such as in relation to approval decisions and conditions on the basis of scope 3 emissions).

DRAFT FINDING 8.4

Not approving proposed resources projects or curtailing their exports on the basis of potential greenhouse emissions in destination markets is an ineffective way of reducing global emissions.

DRAFT LEADING PRACTICE 8.1

Early public consultation on new policy proposals, accompanied by clear evidence-based articulation of why a proposed change is the best way of addressing an issue (for example, through regulatory impact assessments), can avoid policy surprises.

Clear policy objectives aid consistent and predictable regulatory decision making. Policy-makers can achieve this by avoiding the use of vague language in policy documents and providing clearly articulated guidance on the intention and interpretation of policies and legislation.

Changing the duration of greenfields agreements would support investment

DRAFT FINDING 8.5

Allowing parties to negotiate greenfields enterprise agreements with durations that match the life of a greenfields project would improve investor certainty.

DRAFT RECOMMENDATION 8.1

The Australian Government should amend s. 186(5) of the *Fair Work Act 2009* (Cth) to allow an enterprise agreement to specify a nominal expiry date that matches the life of a greenfields project. The resulting enterprise agreement could exceed four years, but where it does so, the business would have to satisfy the Fair Work Commission that the longer period was justified.

Community engagement and benefit sharing can help mitigate impacts on local communities

DRAFT FINDING 9.1

The effects of resources extraction, both positive and negative, are amplified for local communities. Resources extraction can stimulate economic activity in the community, but also lead to effects such as house price fluctuations and strains on local infrastructure.

It is appropriate that resources companies are required to address significant negative externalities associated with resources extraction, such as noise and dust, and provide or pay for infrastructure that they directly use. However, effects such as fluctuating house prices signal the need for market adjustments and should not be suppressed. Approaches such as appropriate planning can moderate price spikes.

Companies should not be required to fund or construct infrastructure that is not associated with their project (although they may do this voluntarily).

DRAFT FINDING 9.3

Companies have an incentive to engage and share benefits voluntarily with communities, to obtain a social licence to operate and improve the liveability of local communities for their workers. The appropriate role for government in this area is limited to coordinating resources companies' community-focused investments, providing guidance to companies and efficiently regulating negative externalities borne by communities due to resources extraction.

DRAFT FINDING 9.2

Resources are owned by the Crown on behalf of all Australians. Although negative externalities of resource projects on local communities should be efficiently addressed, these communities should not benefit over and above other regional communities from resources royalties as a matter of right.

DRAFT FINDING 9.6

It is reasonable that governments provide funding and support for services in regional areas. However, there is no case for hypothecating royalty payments to communities near resource projects — this can weaken governance and encourage money to be spent on projects without fully considering their pay offs. Royalty revenues should be spent wherever community net benefits would be greatest.

Coordination and guidance can help ensure that company activities deliver benefits to communities

DRAFT LEADING PRACTICE 9.3

Coordination between local communities and resources companies can improve the effectiveness of benefit sharing activities. Coordination can involve formal partnerships, such as that between Rio Tinto and the City of Karratha, or community consultation, such as that established by Hillgrove Resources in Kanmantoo and Callington.

DRAFT FINDING 9.4

There is sufficient guidance available to companies from a range of institutions on how to engage with communities and other stakeholders. Most cover similar themes, and there is no one leading practice set of guidelines.

DRAFT LEADING PRACTICE 9.1

Guidance on the social impacts that should be considered in the approvals process, and how they should be considered, helps improve the quality of social impact assessments. For example, the New South Wales Government has issued guidance that outlines:

- what social impacts should be considered in the assessment
- how to engage with the community on social impacts
- how to scope the social impacts and prepare the assessment.

The effects identified in social impact assessments should not always be the domain of companies to address. Rather, leading practice suggests that social impact assessments should provide a framework for companies and governments to work together to address these effects, in line with the principles outlined in draft finding 9.1. The Commission has not identified a leading practice jurisdiction in this area.

Adjustment can be supported by a range of other activities

DRAFT FINDING 9.5

Fly-in, fly-out workforces provide flexibility for companies, and distribute the benefits of resources development around Australia. The use of fly-in fly-out workforces can also moderate some of the effects of resources extraction on local communities such as higher housing demand and prices, particularly during the construction phase.

DRAFT LEADING PRACTICE 9.2

Local procurement requirements can be a relatively high cost way of meeting development objectives. In contrast, resources companies and governments providing businesses in local communities with the support needed to engage with resources companies, such as BHP's Local Buying Program, is likely to create more enduring benefits for communities.

INFORMATION REQUEST 9.1

Is there scope for greater sharing of resources company infrastructure with communities? Are there any examples of where this has been done effectively?

Specific community engagement and benefit sharing arrangements apply for Aboriginal and Torres Strait Islander communities

DRAFT FINDING 10.1

Regulatory requirements to engage and share benefits with Aboriginal and Torres Strait Islander people, particularly under native title legislation, can mean that only small groups of Indigenous people benefit from resources activity. Voluntary activities offer the potential for larger groups of Aboriginal and Torres Strait Islander people to benefit, including those who reside in the local community but are not native title holders.

DRAFT FINDING 10.2

Effective engagement with Aboriginal and Torres Strait Islander communities regarding the use of their traditional lands for resources development incorporates the principle of free, prior and informed consent (FPIC). FPIC is not a right of veto, but creates a process of genuine engagement where governments, resources proponents and communities aim to come to an agreement that all parties can accept.

DRAFT FINDING 10.3

The capacity of Prescribed Bodies Corporate to engage meaningfully with resources companies is critical to Aboriginal and Torres Strait Islander people being able to give their free, prior and informed consent to resources development on their traditional lands, and to negotiating effective agreements. However, many Prescribed Bodies Corporate lack this capacity.

INFORMATION REQUEST 10.1

The Commission is seeking more information on government programs that fund Indigenous prescribed bodies corporate, native title representative bodies and native title service providers. In particular:

- *Have the current funding programs met their objectives? Can you provide examples where funding has made a tangible difference to the native title agreement-making process, or where it has reduced reliance on government funding?*
- *Are there alternative approaches that could improve the capacity of Indigenous organisations, such as training programs?*

DRAFT FINDING 10.4

Proposed amendments to the *Native Title Act 1993* (Cth) (NTA) will allow applicants to enter into future act agreements as a majority by default. This could increase the risk of a majority of the applicant entering into a future act agreement that is not consistent with the wishes of the claim group. However, other proposed amendments to the NTA protect claim groups against this risk. They include allowing claim groups to impose limits on the authority of applicants, and clarifying that applicants owe fiduciary duties towards the claim group.

DRAFT FINDING 10.5

Proposed amendments to the *Native Title Act 1993* (Cth) make it clear that native title applicants owe fiduciary duties to their claim group when entering into native title agreements. However, they do not address questions of whether funds arising from native title agreements entered into before a native title determination belong to the claim group or ultimate native title holding group, and whether applicants and/or claim groups have any duties towards native title holders.

DRAFT RECOMMENDATION 10.1

The Australian Government should review the question of whether native title claim groups or holders are the beneficial owners of funds arising from native title agreements made before a native title determination, and, if native title holders are considered to be the beneficial owners of funds, whether applicants and/or claim groups have any duties towards them in receiving and managing funds for their benefit.

INFORMATION REQUEST 10.2

In principle, it appears appropriate for private agents to have obligations towards all those who hold or may hold native title (as native title representative bodies do). Should the Native Title Act 1993 (Cth) be amended to impose statutory obligations on private agents that are equivalent to those imposed on native title representative bodies? Why or why not?

Clarity around permissible uses of funds held in charitable trusts is needed

DRAFT FINDING 10.6

Some Indigenous organisations interpret the requirement for charities to operate for a charitable purpose and for the public benefit as limiting their ability to invest money for long-term economic development. This may be an overly narrow interpretation of the law, but there is legal ambiguity regarding the scope of permissible activities.

DRAFT RECOMMENDATION 10.2

The Australian Charities and Not-for-profit Commission should publish plain English guidelines on activities that are likely to be consistent with a charity's charitable purposes and for the public benefit, and those which are likely to be outside this scope. This would reduce the risks associated with any for-profit long-term development or commercial activities that Indigenous charities may wish to undertake.

INFORMATION REQUEST 10.3

- *What are some potential reasons to allow native title funds to be removed from charitable trusts?*
 - *What are some mechanisms through which funds may be removed from charitable trusts, and what might the tax implications be? How would these proposals affect non-Indigenous charitable trusts?*
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INFORMATION REQUEST 10.4

The Commission is seeking more information on whether there are barriers, unrelated to tax and charity law, to maximising benefits to communities from native title funds, including in relation to benefit management structures and the investment of native title funds. What are potential solutions to these issues?

Effective governance, conduct, capability and culture are crucial for leading practice regulation

DRAFT FINDING 11.1

Many of the regulatory issues presented to the Commission through the course of this study have been examined previously. Implementing enduring improvement requires that governments ensure the pre-conditions for leading-practice regulatory systems are in place, particularly clear regulatory objectives, adequately resourced institutions and effective governance and accountability arrangements.

DRAFT FINDING 11.2

The ability for regulators to operate effectively and efficiently is constrained by capability challenges, including limited technical expertise and inadequate use of data and technology. In addition, a lack of clarity and regulator transparency inhibits accountability, leads to unnecessary costs for industry and risks a loss of public confidence in the regulatory system. Not least, regulators collect a wealth of data but relatively little is made available to the public.

Good ‘regulatory housekeeping’ can underpin leading-practice systems

DRAFT LEADING PRACTICE 11.1

Statements of Expectations from Ministers to regulators are one effective way for Governments to clearly set out their objectives for the regulatory system. Examples include the Statements to Earth Resources Regulation in Victoria and to the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) at the Commonwealth level.

DRAFT LEADING PRACTICE 11.2

Regular independent review and evaluation of regulatory frameworks and objectives drives continuous improvement and ensures they remain fit for purpose. Victoria, for example, following an inquiry into its Environmental Protection Authority, is clarifying the Authority’s objectives, principles and functions and developing a legislative framework that embeds a risk-based regulatory approach. The Independent Review of the New South Wales Regulatory Policy Framework has highlighted that a ‘lifecycle’ approach for managing regulation over time ensures that frameworks remain fit for purpose.

INFORMATION REQUEST 11.1

The Commission is seeking views on the advantages and disadvantages of institutionally separating regulatory and policy functions in jurisdictions where separation does not already exist, and the effectiveness of other approaches to ensuring regulator accountability.

DRAFT RECOMMENDATION 11.1

Governments in each jurisdiction should assess:

- whether regulators of resources-sector activity are appropriately funded to enable timely processing of applications and effective adoption of a risk-based regulatory system
- opportunities for enhancing regulators’ cost recovery processes.

A range of actions can lift capability and regulator performance

DRAFT LEADING PRACTICE 11.3

Approaches to improving staff capability and technical expertise include:

- secondments — as have been established in the officer exchange program between the Northern Territory Environment Protection Agency and Western Australia's Department of Water and Environmental Regulation
- training programs — akin to those offered in Tasmania for senior management and in the National Offshore Petroleum Safety and Environmental Management Authority for all staff regarding regulatory practices
- development of strategies to target particular skills gaps, including technical expertise — as has been the case in the Victorian Environment Protection Authority
- communities of practice — as in the case of the Australasian Environmental Law Enforcement and Regulators Network's Better Regulation Working Group, which enables members to share experiences and ideas related to regulatory practice
- site visits — as offered by the Victorian Earth Resources Regulator.

DRAFT RECOMMENDATION 11.2

Regulators in each jurisdiction should consult with industry, including peak bodies (such as the Minerals Council of Australia and the Australian Petroleum Production and Exploration Association), on developing a program of site visits in order to enhance technical expertise. The program should be ongoing and part of induction training provided to new staff.

DRAFT LEADING PRACTICE 11.4

Senior management have a key role in fostering a culture that supports ongoing capability development and adoption of modern regulatory practices. Approaches to promoting this type of culture include:

- appointment of a regulatory champion, akin to that established at the then Australian Department of Agriculture
- recognising and incentivising good staff performance, as occurs in Queensland's Department of Natural Resources, Mines and Energy
- working groups to assess and promote cultural change, both internally as occurs at the National Offshore Petroleum Safety and Environmental Management Authority, and externally as with the Australasian Environmental Law Enforcement and Regulators Network's Better Regulation Working Group
- reporting on successes and learnings from failures, as occurs in South Australia's Department for Energy and Mining and Western Australia's Department of Mines, Industry Regulation and Safety.

DRAFT LEADING PRACTICE 11.5

Strategies for managing information and data help promote routine use of data in regulator decision making. Examples include strategies recently developed by the (then) Australian Department of Environment and Energy, the Department of Environment and Science in Queensland and the Department of Mines, Industry Regulation and Safety in Western Australia.

DRAFT LEADING PRACTICE 11.6

Digital technology and data management systems have the potential to improve the efficiency and effectiveness of regulatory processes significantly, while also leading to increased transparency and providing the foundations for more informed consultation. Leading-practice approaches include:

- developing a working group to investigate options for technologies to improve the use of data, as has occurred in the Environmental Protection Authority of Western Australia
- developing a strategy for improving the capabilities required to deploy information and technology, as has occurred at the Australian Department of Agriculture, Water and the Environment
- improving the interface between regulators and resources companies through online portals and databases, as will occur in a Commonwealth pilot with Western Australia
- developing modelling capabilities to support analysis and decision making, as has occurred at the Queensland Office of Groundwater Impact Assessment.

DRAFT RECOMMENDATION 11.3

Ministers, through the Council of Australian Governments, should establish a forum for regulators to share leading-practice initiatives from their jurisdictions, including those implemented to develop the capabilities and expertise of their agencies.

Regulators can play a key role in building community confidence

DRAFT LEADING PRACTICE 11.7

The provision of publicly accessible information and data by regulators can promote community confidence in the regulatory system and the sector. There are a number of instructive examples, including the National Offshore Petroleum Safety and Environmental Management Authority's website and Western Australia's offsets register. Regulators can be supported by the data and information published by other independent bodies, such as Queensland's GasFields Commission and the Gas Industry Social and Environmental Research Alliance.

DRAFT LEADING PRACTICE 11.8

Regulators can improve the public's understanding of regulatory objectives and processes by:

- engaging with local communities on the regulatory process throughout the lifecycle of a resources project, including in the initial scoping stage, as occurs in Canada
- conducting broader consultation on an ongoing basis to understand community expectations and provide this feedback to policy makers and the government, as occurs in New South Wales.

INFORMATION REQUEST 11.2

The Commission is seeking feedback on leading practices that it has overlooked. Information on how these practices have contributed to improved regulatory outcomes would also be appreciated.
